TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY.

FILED FEBRUARY 5, 1906.

No. 321.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLANTS,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY.

FILED JUNE 14, 1906.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

(20,083 and 20,286.)

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1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

Record of the proceedings of the Circuit Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said Court begun and held at the city of Cleveland, in said District, on the first Tuesday in October, being the third day of said month, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth, to-wit, on the 4th day of December, A. D. 1905.

Present: The Honorable Robert W. Tayler, United States District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

Said action was commenced on the 21st day of March, A. D. 1905 and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned and orders of the court were made and entered in the order and on the dates hereinafter stated, to-wit:

2 (*Bill of Complaint.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division:

The above named complainant, The Cleveland Electric Railway Company, a corporation duly organized and existing under the laws of the State of Ohio, brings this its bill of complaint against

the above-named defendants, The City of Cleveland, which is a municipal corporation of the State of Ohio, within said District, and The Forest City Railway Company, which is a corporation of the State of Ohio, having its principal office in said District; and says:

I.

The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the city of Cleveland and vicinity, as in this bill hereinafter more particularly set forth.

The defendant, the City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and as respects the matters and things hereinafter set forth as to the ordinances affecting this complainant, said defendant acts and has acted under delegated power from the legislature of the State of Ohio; and,
3 so acting, has, by legislative enactment, made sundry contracts with your orator and its predecessors in interest under which it is now operating said lines of railway in the City of Cleveland.

The defendant, The Forest City Railway Company, is a corporation organized under the laws of the State of Ohio, for the purpose of constructing, maintaining and operating lines of street railway in the City of Cleveland.

II.

That the amount in controversy in this action, which is a civil action, exceeds, exclusive of interests and costs the sum of five thousand dollars, and is a controversy arising under the Constitution of the United States in this;—that your orator seeks relief against the defendants in this bill by reason of an attempt on the part of the defendants to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator, in contravention of and in violation of the Constitution of the United States, and especially contrary to and in violation of Section 10, Article 1, thereof.

III.

Your orator shows, by way of explanation and in order to avoid repetition in this bill, that "Garden Street" and "Ohio Street," as referred to in the several ordinances hereinafter mentioned, and otherwise referred to, were subsequently united under one name and designated "Central Avenue," which is the name by which said former Garden Street and Ohio Street are now known.

IV.

Your orator is a consolidated company organized in the year 1893, and was formed by the consolidation of the following-named constituent companies which, at and prior to the consolidation,

owned and operated street railways in the City of Cleveland
4 under ordinances duly passed by said municipality and accepted by said companies; and, by the terms of such consolidation and the force and effect thereof, as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges and property, possessed by said constituent companies and each of them. The constituent companies so consolidated were as follows:

The east Cleveland Railroad Company, which was operating lines of street railway in said city described generally as the Prospect Street and Euclid Avenue line, together with the Wade Park Avenue, Cedar Avenue, and Garden Street lines and various branches and extensions thereof.

The Broadway & Newburgh Street Railroad Company, which was operating a line of street railway from Newburgh (at that time a southern suburb of the city of Cleveland) to the central part of the city.

The Brooklyn Street Railroad Company, which was then operating a line from Brooklyn (then a suburb of said city) and the so-called South Side of said City, to and through the Public Square, through Ontario Street and Scovill Avenue, to the southeasterly portion of the city.

The south Side Street Railroad Company, which was operating a line of railway from the south Side so-called, through Scranton and Jennings Avenues.

And your orator shows that each of said companies, by the consolidation of which your orator was formed, was operating under grants from the city of Cleveland authorizing the continued operation of said roads for a period of years, and no one of which grants expires before the first day of July, 1914.

V.

5 Your orator is also the owner, by purchase, of all and singular the lines of railway, rights, privileges and franchises, of The Cleveland City Railway Company; such lines of railway, rights, privileges and franchises, having been acquired by your orator so by purchase on or about July 1st, 1903. Said The Cleveland City Railway Company, the property of which was so purchased by your orator and of which it is the successor in interest as aforesaid, was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company, each of which companies was a corporation organized under the laws of the State of Ohio for the purpose of operating lines of street railway in the city of Cleveland; and, at the time of such consolidation The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as the Woodland Avenue Lines and the West Side Lines; and The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior Street and St. Clair Street to the easterly limits of the city. None

of the grants under which said The Cleveland City Cable Railway Company was operating expires before January, 1910.

VI.

The total mileage of single track which is operated by your orator, as the successor in interest of all of said various companies hereinbefore mentioned, is about 236 miles, of which the mileage of the lines described in the ordinance of the City of Cleveland passed January 11th, 1904, purporting to grant certain rights to defendant, The Forest City Railway Company, and hereinafter more fully set forth, is about 12 miles.

6 VII.

Your orator's contracts with the City of Cleveland, growing out of said various consolidations and the obligations imposed by the various ordinances hereinafter referred to, require it to operate said entire system, and, as part thereof, to operate through cars over different portions of said lines, and to give transfers from one line to another, as defined in the ordinances of the city of Cleveland; and your orator shows that such obligations upon its part are continuing obligations, running to the expiration of its franchises from the City of Cleveland, to-wit: in 1914.

VIII.

Of the lines of railway of which your orator is so the owner and now operating, the first was constructed by the East Cleveland Railroad Company, a corporation incorporated in the year 1859, and on November 1st, 1859, July 3rd, 1860, and April 15th, 1862, said East Cleveland Railroad Company received grants from the city of Cleveland for the operation of a line of railway beginning at the easterly city limits at Willson avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street, and Euclid Avenue, to and around the southerly and westerly sides of the Public Square, to and on Superior Street, and through Superior Street to Water Street. The grants so made to said East Cleveland Railroad Company were for twenty years from September 20th, 1859, expiring on September 20th, 1879; and under the grants so made, the lines of railway therein authorized were shortly thereafter constructed, and constituted the main line of the east Cleveland Railroad Company.

IX.

On July 23rd, 1862, the East Cleveland Railroad Company received from the trustees of East Cleveland Township, which township adjoined the City of Cleveland upon the east, and which
7 has since become part of said City, a right to construct and operate a street railroad on Euclid Avenue from its intersection with Willson Avenue easterly to Doan's Corners so-called now the corner of Euclid Avenue and Fairmount Street. Under said grant, the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of and part

of the main line of said East Cleveland Railroad Company; so that upon the completion of said extension, the main line of said company was extended easterly from Willson Avenue to Doan's Corners so-called, now the corner of Euclid Avenue and Fairmount Street.

X.

Said main line of said East Cleveland Railroad having been constructed and put in operation under the ordinances aforesaid, on or about January 14th, 1868, the council of the City of Cleveland granted to said East Cleveland Railroad Company the right to construct and operate a street railroad in connection with its main line and as an extension thereof; beginning at the intersection of Prospect and Brownell streets; thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue, to the easterly boundary of the city of Cleveland. Said grant to said East Cleveland Railroad Company to so construct such extension of its main line out Garden Street as aforesaid was to continue during the period of twenty years from and after January 14th, 1868; and it was also in said ordinance granted permission to continue to use and occupy the streets, avenues and public grounds over which its said main line was then constructed and operated, westerly from the junction of said road with its main line to its westerly terminus, for the same period of time. And thereby your orator shows that there was
8 granted to said East Cleveland Railroad Company the right to construct and operate said road upon Brownell Street and Garden Street in connection with its main line, and to continue the operation of said Garden Street extension and its main line from Brownell and Prospect streets westerly on Prospect Street to Erie Street; on Erie from Prospect Street to Euclid Avenue; on Euclid Avenue from Erie Street to and around the southerly and westerly sides of the public square to Superior Street; thence westerly on Superior Street to Water Street. The grant so made was duly accepted by said East Cleveland Railroad Company, and lines of railway therein authorized constructed and put in operation; and thereby your orator, by contract with the city of Cleveland, acquired the right to operate its said main line and extension thereof from Brownell Street, to Garden Street, and through Garden Street to the easterly limits of the city of Cleveland, up to January 14th, 1888.

XI.

At the time of the construction of said Garden Street extension of said main line of the East Cleveland Railroad Company, a portion of the Village of East Cleveland which lay adjoining the easterly limits of the city of Cleveland and is now part of said city was without street railroad facilities upon Garden Street as it extended through said territory, and on or about March 30th, 1868, the council of the Village of East Cleveland granted to the East Cleveland Railroad Company the right to construct and operate an extension of its lines upon Garden Street, beginning at the easterly line of the City of

Cleveland in Willson Avenue; thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly in the center line of Baden Street to the southerly
9 line of Wade Street; said grant to continue for the period of twenty years from March 30th, 1868; and which grant from said Village of East Cleveland was duly accepted by said East Cleveland Railroad Company, and the line therein authorized constructed and put in operation; and by virtue thereof the said East Cleveland Railroad Company acquired and possessed the right, by contract from the defendant city of Cleveland and the council of the Village of East Cleveland, to maintain and operate, in connection with and as an extension of its main line, its line of railroad connecting with the original main line at Prospect and Brownell streets, and extending out Garden Street to the city limits, and easterly as defined in said ordinance of March 30th, 1868, passed by the council of the Village of East Cleveland.

XII.

On or about August 2nd, 1870, the Village of East Cleveland made an agreement with the East Cleveland Railroad Company by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and in and by said agreement it was recited that said tracks "have been constructed and operated upon the southerly side of the carriage way of said Euclid Avenue, and being an extension or branch of its main road located in the City of Cleveland."

XIII.

On or about March 25th, 1873, the said East Cleveland Railroad Company and the said City of Cleveland desiring to have the Garden Street line of said East Cleveland Railroad Company connected with the main line at the intersection of Erie and Prospect Streets instead of as originally at the intersection of Prospect and Brownell streets, the city council of said city, by resolution accepted and acted upon by said East Cleveland Railroad Company, granted permis-
10 sion to said Company to lay a double-track street railroad from its main line, at the intersection of Erie and Prospect Streets, through Erie Street to Ohio Street; thence through Ohio Street to Garden Street, connecting with Garden Street extension at this point as the same had originally been constructed; and requiring that said company should, upon the completion of said tracks in Erie and Ohio Streets, take up and remove its tracks in Brownell Street from the main track in Prospect Street to Ohio Street, whereby, under authority of said resolution and the same having been carried out, the line of the Garden Street extension of such original mainline was as follows: Intersecting the main line at Prospect and Erie Streets; thence running through Erie Street to Ohio Street; thence through Ohio Street to Garden Street; thence through Garden Street to Baden Street; thence through Baden Street to Quincy Street. And by virtue of the contract obligations and rights so established, the said East Cleveland Railroad Company was required to operate said

Garden Street extension in connection with said main line, and over that portion of the main line beginning at the intersection of Erie and Prospect streets, continuing through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and in Superior street to Water Street, as hereinbefore stated. And your orator shows that, by virtue of the said several contracts under which the said East Cleveland Railroad Company had so constructed its main line and said Garden Street extension thereof, it was required to operate said extension in connection with said main line, using a material portion thereof for the purpose of said operation, and thereby possessed under said contract and its acceptance and its completion of said railroads, the right to continue the
11 operation of said main line and said Garden Street extension in connection with said main line, to the 20th day of September, 1879.

XIV.

On or about May 23rd, 1876, an ordinance was duly passed by the council of the City of Cleveland and accepted by said East Cleveland Railroad Company, by which the said East Cleveland Railroad Company was authorized to extend its Garden Street lines from the then easterly terminus thereof at Baden Street, along said Baden Street to Quincy Street, along Quincy Street to New Street, along New Street to Garden Street, there to connect with the existing tracks upon Garden Street. And in and by said ordinance the said East Cleveland Railroad Company was required to equip and operate said Garden Street tracks as so extended, in connection with and as part of its original Garden Street Extension and its main line of road; said main line being as hereinbefore set forth; whereby the said East Cleveland Railroad Company became obligated, as between it and the city, and acquired the right, as between it and the city, to continue the operation of said Garden Street tracks as extended in connection with the main line of tracks of said East Cleveland Railroad Company; and in and by said ordinance it was provided that such rights were to continue for the period of twenty years, whereby said East Cleveland Railroad Company acquired the right to the continued operation of its entire system of main line and said Garden Street extension and said extended tracks at least for the period of twenty years from May 23rd, 1876.

XV.

On or about September 15th, 1879, the city council of the city of Cleveland passed another ordinance relating to the operation
12 of the lines of railroad of said East Cleveland Railroad Company; said ordinance having been passed, as therein recited, by authority of an act of the legislature passed June 12th, 1879, and it being therein recited that the said East Cleveland Railroad Company, then operating a street railroad in the city of Cleveland by virtue of a grant or permit previously obtained, had made application in writing for a renewal of such grant "and a permit to maintain and operate its said street railroad in and along the streets as heretofore and now located and operated, for the period of twenty-

five years from and after the 20th day of September, 1879." And in the ordinance passed relative to such application it was provided, that the East Cleveland Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double-track street railroad, with the necessary switches, turnouts and turntables, as theretofore constructed and then maintained and operated in the city of Cleveland. And in and by said ordinance portions of the streets of the city of Cleveland in which the said company had theretofore constructed and was then operating railroads are set forth, namely; The original main line of the company described from its westerly terminus as commencing at the intersection of Water and Superior streets; thence through Superior street to and around the south and west roadways of Monumental Square to Euclid Avenue; thence through Euclid Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through Case Avenue to Euclid Avenue; thence through and along Euclid Avenue to Willson avenue. But your orator submits and shows that said ordinance, in legal effect, granted to said East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland, including the main line which is in
13 said ordinance described and the extension thereof which had been constructed upon Garden Street as hereinbefore set forth, and with respect to which extension said East Cleveland Railroad Company was obliged to maintain and operate the same as part of and in connection with its main line until 1896. And by the terms of said ordinance of September 20th, 1879, the said East Cleveland Railroad Company was authorized to continue the operation of its entire system, including its tracks upon Garden Street in connection with its main line, for the period of twenty-five years from September 20th, 1879.

XVI.

That on or about March 22nd, 1860 another ordinance was passed by the council of the city of Cleveland, granting permission to the East Cleveland Railroad Company to extend its tracks in Garden Street, which had been built and constructed under the various ordinances hereinbefore referred to; and in and by said last-mentioned ordinance said East Cleveland Railroad Company was empowered to extend its tracks in Garden Street from the intersection of Baden and Quincy streets in an easterly direction along Quincy Street to the intersection of Lincoln Avenue, and to equip and separate its said extension and all the Garden Street tracks for the period of twenty-five years, whereby the said city of Cleveland, having already, as hereinbefore set forth, granted to the East Cleveland Railroad Company the right to operate its entire system until September 20th, 1904, in and by the ordinance last mentioned undertook to grant the right to said Company to operate an extension of said system, namely; the Garden Street Tracks, for a period of six months beyond the expiration of the grant theretofore made to operate the entire System.

XVII.

14 On or about February 9th, 1885, the city council of the city of Cleveland passed another ordinance authorizing and empowering the east Cleveland Railroad Company to extend its Garden Street tracks from the terminus of its then present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue, and to equip and operate said extension as a single-track railroad with all necessary switches, turnouts and turntables, in connection with its said Garden Street tracks and its main line; and in and by said ordinance providing that the grant therein made should terminate with the grant for the main line of the East Cleveland Railroad Company; which said ordinance so passed was duly accepted by said East Cleveland Railroad Company, and the extension therein provided for built, equipped, and put in operation, whereby your orator shows that a contract arose between the East Cleveland Railroad Company and the City of Cleveland by which said company was empowered to continue the operation of the Garden Street tracks in connection with the main line of said East Cleveland Railroad Company; such right to terminate only with the grant for the operation of said main line. And your orator shows, as hereinbefore set forth, that the grant for the operation of the main line of said East Cleveland Railroad Company did not expire prior to September 20th, 1904.

XVIII.

On or about June 17th. 1887, the council, of the city of Cleveland passed another ordinance providing for the extensions of tracks of the East Cleveland Railroad Company upon Garden Street, which ordinance was duly accepted by said company; the said extension thereby authorized being from the intersection of its then present track with Baden Avenue upon Garden street, in an easterly
15 direction along and upon Garden Street to the Easterly line of Lincoln Avenue; and providing that the right to operate such extension should terminate with the grant for the Garden Street main line; and your orator shows, as hereinbefore set forth, that the grant for the Garden Street main line terminated at the same time as the original main line of the East Cleveland Railroad Company, and that the Garden Street main line so referred to in said last-mentioned ordinance included the entire lines of the East Cleveland Railroad Company as the same had been created and defined in the ordinances hereinbefore referred to.

XIX.

That thereafter, on July 13th, 1888, the city council of the city of Cleveland passed an ordinance granting to the East Cleveland Railroad Company the right to change its motive power upon certain portions of its lines from horse power to electric power; and in and by said ordinance it was provided that in consideration of the large expenditure of money and of the improved facilities to be afforded

the public, upon said Main and the Cedar Avenue lines, the grant therein made should continue in force for the period of twenty-five years from and after the date of the passage of said ordinance. Your orator further shows that, in pursuance of such authority, the said East Cleveland Railroad Company did proceed at large expense to equip the portions of its lines in said ordinance mentioned with electricity, and has and did at all times, and your orator since the acquisition of said lines has at all times, complied with all and singular the conditions and requirements of said ordinance. And your orator shows that under the terms of said last-mentioned ordinance the said East Cleveland Railroad Company was only required to equip a portion of its lines with electricity, but it was therein provided that, upon request of the council, it should extend
16 the electrical equipment over other portions of its lines; and thereafter, on or about May 13th, 1899, the council, by resolution, required of said East Cleveland Railroad Company the extension of the Electrical equipment over its original main line from Willson Avenue through Euclid Avenue to Case Avenue, through Case Avenue to Prospect Street, through Prospect to Erie Street, through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and thence through Superior to Water Street; and also such portion of its Cedar Avenue extension as had not theretofore been equipped with electricity.

XX.

On or about March 10th, 1890, the city council of the City of Cleveland passed an ordinance authorizing the East Cleveland Railroad Company to substitute electrical motive power for horse power upon its Garden Street extension of its main line as hereinbefore more particularly described; and in and by said ordinance providing that the right to operate said Garden Street extension of said main line continue during the term of the company's then present grant for the operation of tracks upon the Garden Street extension, and your orator shows that by reason of the various ordinances hereinbefore referred to there had been granted to the East Cleveland Railroad Company the right to continue the operation of its tracks upon Garden Street and the extensions thereof up to the termination of the grant for the operation of the main line of said East Cleveland Railroad Company, and, as hereinbefore set forth, the right to operate the main line of said company, under the contracts then existing between it and the city of Cleveland, did not expire and do not expire until July 13th, 1913, whereby the said East
17 Cleveland Railroad Company, by virtue of the ordinances hereinbefore set forth and upon the acceptance of said ordinance and the expenditure of large sums of money for the equipment of said Garden Street extensions with electricity, acquired from the council of the city of Cleveland the right to continue the operation of said Garden Street tracks and extensions thereof until the 13th day of July, 1913.

XXII.

On or about March 30th, 1891, the city council of the city of Cleveland passed an ordinance, which was duly accepted by said East Cleveland Railroad Company, granting the right to said company to construct and operate a second or additional track upon Central Avenue (formerly Garden Street) from the east line of Willson Avenue to the right-of-way of the Cleveland and Pittsburgh Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at the Cleveland and Pittsburgh railroad tracks; the said additional track herein provided for covering a distance of about 2400 feet; and in and by said ordinance it was provided that the same should be accepted in writing by said railroad company, and that such acceptance should be deemed a contract on the part of said railroad company with the said city to perform all and singular the matters and things required in said ordinance to be performed; and in and by said ordinance it was further provided that the right therein granted should be valid until the expiration of the grant for said company's main line.

Your orator shows that, by force of this ordinance which it alleges was duly accepted by said railroad company and has in all respects been complied with by it and its predecessor, the right was in express terms granted to said railroad company by
18 the city to lay a double-track upon the portion of Central Avenue (formerly Garden Street) in said ordinance described, to be operated as part of said system and that the right to so operate should continue until the expiration of the grant for said company's main line; and your orator shows, as hereinbefore more specifically set forth, that the grants for the operation of the main line of said company, by express ordinance, did not and do not expire until the 13th day of July, 1913.

XXII.

On or about April 20th, 1891, the city council of the city of Cleveland passed an ordinance granting to the East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue, authorizing said company to connect the tracks therein authorized with the tracks then laid upon New Street. Your orator shows that the permission so granted was a permission to lay an additional or second track on part of the Garden Street extension of the main line of said company, and it is in said ordinance provided that the right therein granted shall be valid until the expiration of the grants for said company's tracks in Quincy Street east of Lincoln Avenue, to-wit: July 13th, 1913, whereby your orator shows that the city council, in the granting of permission to lay an additional or second track in Quincy Street, being a portion of the Garden Street extension, expressly recognized that the grant to the company for the operation of said tracks extended until July 13th, 1913. And your orator shows that the grants for said company's tracks in said

Quincy Street east of Lincoln Avenue, referred to in said ordinance, were granted by ordinance of February 9th, 1885, hereinbefore set forth, whereby a grant was made to said East Ceveland Railroad Company to so extend its Garden Street extension east of Lincoln Avenue, and wherein it was provided that said company
19 should equip and operate said extension in connection with its main line, and that said grant should terminate with the grant for the main line.

XXIII.

On or about July 17th, 1893, the city council of the city of Cleveland passed an ordinance granting to your orator, the successor of the East Cleveland Railroad Company as hereinbefore set forth, permission to extend its double-track street railroad from its then present tracks at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines in Ontario Street; also to extend its tracks from the intersection of Superior and Seneca Streets along Seneca Street to Lake Street; thence along Lake Street, and thence along Ontario Street to the center of Monumental Square, connecting with the then present tracks in Ontario Street; and to construct and maintain such extensions and operate the same by electricity upon the terms and conditions in said ordinance mentioned; and among other conditions in said ordinance mentioned; and among other conditions of said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the city council on the 29th of May, 1893, in reference to the consolidation of the various companies forming your orator, as hereinbefore set forth. And in said ordinance it was also provided that the council should have the right at any time to require the company to operate its cars over the entire length of any of the lines or extensions of said constituent companies, in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies into your orator; that the council might require night cars to be operated the entire length of each of the lines of the company at least hourly
20 each way between midnight and six A. M., daily; that the company should assume the expense of sprinkling in addition to that then required of it by existing ordinances; and that in consideration of the grant made by the said council, the company agreed therein that all the terms and provisions of the section relating to additional burdens for sprinkling *et cetera* should apply to and be a condition of all the grants theretofore made by the council to said constituent companies or either of them; and in and by said ordinance it is provided that the grant therein made shall be in force until the 13th day of July, 1913. And your orator shows that the said last-mentioned ordinance relates to a portion of the line originally constructed as part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and requires of your orator the operation of all of its lines and tracks, including said Garden Street extension, over the lines of track pro-

vided for in said ordinance. And your orator further shows that said ordinance so providing for additional tracks was passed by the city council with special reference to the running of cars operated upon the Garden Street extension, and that immediately upon the completion and equipment of said tracks for operation, all of the cars operated upon the Garden Street extension were required by the City to be operated upon the tracks provided for in said last-mentioned ordinance, and, by the terms of said ordinance, as hereinbefore set forth, the obligation to continue such operation and the right of the company to so operate it is provided shall continue until the 13th day of July, 1913.

21 XXIV.

Your orator further shows that, on February 19th, 1894, the city council of the city of Cleveland, determining it to be to the public interest to have established a cross-town line upon Willson Avenue, duly passed an ordinance entitled:

"An Ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue:—

which said ordinance was duly accepted by both of the companies therein named. By the terms of said ordinance the said companies were required to build and equip a double-track electric street railway along Willson Avenue from Broadway to the northerly terminus thereof; a portion of said railway to be built by your orator and the other portion by The Cleveland City Railway Company. And in — by section 5 of said Ordinance it was provided that the operation of cars on said railway by The Cleveland City Railway and by your orator shall be under the control and regulation of the council; and by section 6 of the said ordinance it is provided, in substance, that passengers on any car operated on any part of said Willson Avenue, upon payment of one fare, shall be entitled to be transferred to any other line of either said The Cleveland Electric Railway Company (your orator) or said The Cleveland City Railway Company intersecting or coming to Willson Avenue, and with the additional right to transfer from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga River, and providing that passengers on any line of either of said companies intersecting or coming to Willson Avenue shall be entitled to transfer to Willson Avenue and have a continuous ride thereon.

22 Section 7 of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each outer rail; also requiring of the companies the widening of the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side; which last-mentioned requirements were in addition to existing obligations with respect to paving and widening the street. And in and by section 10 of said ordinance it is provided that this grant shall be in force until the first day of July, 1914.

Your orator further shows that the grants under which it was

operating at the time of the passage of the last-mentioned ordinance, as to several of its lines, expire on the first day of July, 1914, and that the obligations imposed upon your orator by virtue of said ordinance in this paragraph referred to are continuing obligations, requiring of your orator the performance of all and singular the conditions of said ordinance, including the issing of transfers from its other lines and accepting transfers from the Willson Avenue line, up to the first day of July, 1904. And your orator shows that Willson Avenue and the lines of road therein constructed are intersected by the Central Avenue (formerly Garden Street) and Quincy Street tracks constructed under the various ordinances hereinbefore mentioned; and your orator submits that the council, as it might lawfully do, did, by virtue of the ordinance of February 19th, 1894 require of your orator, in the operation of its said Central Avenue and Quincy Street tracks, to give and receive transfers from the Willson Avenue cross-town line, and that said Willson Avenue line and said other lines of your orator intersecting said Willson Avenue should be operated together, so that passengers should have free
23 transfers as between the Willson Avenue line and such intersecting lines, thereby subjecting your orator to such requirements; also granting to your orator the right to continue the operation of such entire system up to the first day of July, 1914. And your orator shows that unless it has the continued right to operate its Central Avenue and Quincy Street extensions until the first day of July, 1914, it cannot fulfill the obligations created and imposed nor exercise the right granted by said ordinance of February 19th, 1894; and your orator submits that, by virtue of said ordinance of February 19th, 1894, all of the lines of your orator, including the Garden Street (Central Avenue) extensions hereinbefore referred to, which intersects Willson Avenue, were extended to expire on the first day of July, 1914.

XXV.

On June 25th, 1894, the city council of the city of Cleveland passed an ordinance which was duly accepted, and has at all times been complied with by your orator, granting to it the right to extend and operate its double-track street railroad in Quincy Street from New Street to Willson Avenue; that the double-track street railroad which your orator was, at the time of the passage of this ordinance operating in Quincy Street and therein referred to, was part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and had been constructed and operated under the various ordinances hereinbefore referred to; and in and by the provisions of said last-mentioned ordinance your orator, as the successor in interest of said East Cleveland Railroad Company and the other companies forming your orator as a consolidated company, was granted permission to extend and operate by electricity its double-track street railroad from its then present tracks in Quincy Street westerly to Willson
Avenue, connecting by curves with the cross-town line upon
24 Willson Avenue as in this bill hereinbefore more particularly described; as in and by said ordinance it was provided that the right therein granted should terminate with the grant for the

said company's then present line in Quincy Street; and your orator shows that by reason of the various ordinances and contracts hereinbefore referred to, the grant for said company's then present line in Quincy Street did not and does not expire prior to July 1st, 1914.

XXVI.

That prior to the consolidation which forms your orator, the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company and the South Side Street Railroad Company, were operating independent lines of street railway in the city of Cleveland, there being no interchange of traffic between said roads except that the said Brooklyn Street Railroad Company and The South Side Street Railroad were required to give and receive transfers to and from each other at certain points, and the public was required, in patronizing any one of said lines and desiring passage on another, to pay an extra fare, with the exception hereinabove stated. And thereupon on or about the 29th of May, 1893, the council of the city of Cleveland, by legislative enactment, prescribed the terms and conditions upon which said various companies last above named might be consolidated into your orator, and, by the terms of such action, the city, through its council, consented to such consolidation upon the condition that thereafter all of the lines of said different railroads should be operated by your orator as one system, and that only one fare should be charged for a continuous ride on or over any line of railway formerly owned by any one of said constituent companies and any line of any other of said constituent companies within the limits of the City of Cleveland; and also upon the condition that passengers on any of such lines paying one fare should be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for such single fare, and requiring that your orator should, within ten days after the adoption of the resolution embodying such terms and conditions, file with the City Clerk in writing an acceptance of the terms and an agreement to perform the same. And thereafter, on or about the same date, your orator in writing, as by said resolution required, duly accepted the terms and conditions prescribed in said resolution and agreed to perform the terms of the same. And since the completion of said consolidation your orator has operated all of the lines which heretofore belonged to the constituent companies as one entire system, of which the former lines of the East Cleveland Railroad Company were a part; and in carrying out the terms and conditions so prescribed by said council as a condition precedent to said consolidation, your orator has united all of the lines formerly operated by said various companies in such manner as that many of the original lines, including the lines of track built as the Garden Street extension have long since lost their identity as distinct lines of your orator's company; and your orator has been operating under the terms of said consolidation ordinance for one fare, and with a system of transfers, continuous lines of through cars over various parts of the system which were, before said consolidation, independent lines of said

various railroad companies, and by virtue of said consolidation it became and was necessary that your orator, in carrying out the terms and conditions prescribed by the council, should establish such through car lines, and that if it should be deprived of the right to operate that portion of its present system which was originally an extension of the main line of the East Cleveland Railroad
26 Company upon Garden Street, it would be impracticable for it to carry out its agreement made with the city at the time of the consolidation with respect to the operation of all of its lines as one system, at one fare, and to give continuous rides and transfers thereover.

XXVII.

On or about the first day of July, 1903, your orator acquired by purchase, as hereinbefore set forth, all and singular the railroad, tracks, property, rights and franchises, of The Cleveland City Railway Company, which was then operating various lines of railroad in competition with the lines then operated by your orator; and by virtue of its acquisition of said lines of The Cleveland City Railway Company it has again been required to establish additional through lines and through car service, so that it has resulted, and the situation now is, that by virtue of the statute in such cases made and provided, the tracks which were built upon Garden Street as part of an extension of the main line of the East Cleveland Railroad Company have now become part and parcel of a through system, covering all of the street railway tracks in the city of Cleveland, being a total mileage of about two hundred and thirty-six miles, and through car service is being given over said entire system, and the said Garden Street Extension is not now, and has not been since the consolidation of 1893, treated by your orator or the city council or the public as having any identity separate and distinct from, but is and has been since said consolidation treated as an integral part of the entire system of roads in operation by your orator, and that were your orator to be now deprived of the right to operate the tracks or any substantial portions thereof built upon Garden Street (now Central Avenue) as an extension of the original main line of the
27 East Cleveland Railroad Company, it would be impracticable for it to continue to operate the general system with through car service and at one fare with transfers, which it is now conducting over such entire system so established as hereinbefore set forth.

XXVIII.

Your orator further shows that, notwithstanding its right in the premises as hereinbefore set forth and the provisions of its several contracts with the City of Cleveland, and in direct violation and impairment of the same, the defendant city of Cleveland, acting under delegated power from the state of Ohio, by action of its common council on the 11th day of January, 1904, without having previously advertised any application for such grant, and without submitting the same in any manner to competitive bidding, and without compliance or attempted compliance with the statutes relating

to the granting an original right to construct and operate a street railroad, as distinguished from the grant of a renewal of an existing right, passed an ordinance in the words and figures following, to-wit:

Ordinance No. 42240.

An ordinance granting to the Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:

Commencing at the intersection of Prospect and Erie Streets, in the city of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln avenue; also commencing at the intersection of Quincy street with Willson avenue, in said city, thence easterly on, over and along Quincy street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expire by limitation at midnight on the 22nd day of March, 1905; and

Whereas, the city Council of the City of Cleveland, State of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interests; and

28 Whereas, The Forest City Railway Company has presented and made in writing to the City Council of the City — Cleveland, State of Ohio, an offer to maintain and operate a street railroad on, over and olang the streets avenues and parts thereof hereinafter described, upon terms which are deemed by the Council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the council of the City of Cleveland, State of Ohio, deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad on, over and along said streets, avenues and parts thereof hereinafter described; and

Whereas, on the 28th day of December, 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

"Whereas, an application has been presented to this Council for renewal of certain street railroad grants and privileges by The Forest City Railway Company, and Ordinance No. 44240 introduced in this Council granting to the said The Forest City Railway Company the privileges asked for in their said application; and

Whereas, said Ordinance No. 44240 has been referred to the Committee on Street Railroads, Boards of Public Service, City Solicitor and Mayor; and

Whereas, the chairman of the said street Railroad Committee has fixed Thursday, the 31st. day of December, 1903, at three o'clock p. m. in Room 108 City Hall, as the time and place of the first meeting to consider said application and ordinance; now, therefore,

Resolved, that the city Clerk be and he is hereby directed to transmit to The Cleveland Electric Railway Company a copy of said application, and said ordinance and a copy of this resolution together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof, to participate in the deliberations of said Committee and to offer any suggestions or propositions that they see fit to make, either to said Committee or to this Council."

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did *not* notify The Cleveland Electric Railway Company of the passage and contents of said resolution, and did receive in reply from The Cleveland Electric Railway Company the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the 29th inst. addressed to The Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44358 and 44257 adopted by the Council December 28th, 1903, and as directed by the Council, extending an invitation to this Company to be present at a meeting of the Committee to which said resolutions have been referred to participate in its deliberations.

We beg to advise the Committee and the City Council that the proposed ordinances to be considered by the Committee, which purports to be ordinances to grant to The Forest City Railway Company the right to operate cars over portions of Woodland Avenue and Central Avenue, in which streets this company is now operat-
29 ing, are ordinances which impair the existing contract rights of this company. We are advised that it is not true, in law or in fact, as recited in said ordinances that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this company operates in Woodland Avenue and Central Avenue expires for some years to come. The franchises under which this company is operating in said streets are contracts between it and the city of Cleveland which cannot lawfully be impaired by subsequent ordinances of the City, and upon the faith of these contracts this company has invested large sums of money. The Company will not in any way recognize the right of the Council to impair its contract rights in the premises.

There are various other reasons why this proposed legislation could not be legally passed by the Council but we deem it sufficient at this time to call your attention to the fact that you cannot impair our contract rights in the method suggested by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *President.*

To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk, answering the invitations in resolutions Nos. 44257 and 44258 adopted by the city Council of the City of Cleveland, State of Ohio, —— 28, 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances, that the franchises now owned by this Company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this Company operates in Woodland Avenue and Central Avenue expires for some years to come."

The Committee having ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your Company and the City of Cleveland.

The Committee has taken a recess until Monday, the 4th. inst. at 4.00 p. m. when they will again meet at Room 108 City Hall for further deliberation on this subject. The Committee is advised that the grants which ordinances 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd. day of March, 1905. Since you claim that the said grants expire at later dates, the Committee hereby requests specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the committee meeting on Monday afternoon.

The Committee also desires you to have your representatives present at said meeting to present any views or suggestions that you may have to make upon the subject of the ordinances under consideration.

Very truly yours,

CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the Committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of The Cleveland Electric Railway Company, was present and stated that Mr. Andrews, president of said Railway Company, was out of the City and that in his absence no one was authorized to speak for him, but no other answer was made by said The Cleveland Electric Railway Company to the letter of said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with;

Now, therefore, be it ordained by the Council of the City of Cleveland, State of Ohio, that,

SECTION 1. The Council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway Company, its successors and assigns, hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles, trolleys, feed and span wires, appliances, equipment, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central avenue; thence easterly on, over and along Central avenue to Lincoln avenue; also commencing at the intersection of Quincy Street with Willson avenue, in said city; thence easterly on, over and along Quincy Street to Woodland Hills Avenue.

The rights herein granted in Erie Street are subject to the reserved right of the City of Cleveland to make further grants in said Erie Street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the city of Cleveland may deem just and equitable.

SEC. 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first-class, and to the satisfaction of the Board of Public Service.

SEC. 3. The right is hereby granted to said grantee to erect the necessary poles and wires, and connect the necessary power houses with said street railroad wherever necessary.

SEC. 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by
31 the grantee, if such transfer be necessary to enable him to continue to his destination. The City reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years of age, accompanied by a person paying fare, shall be carried free.

SEC. 5. The City reserves the right to purchase any street railroad tracks, poles, wires, appliances or equipment owned or used by the grantee on the route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a board of arbitration, consisting of three persons, a majority of whom shall decide all questions.

SEC. 6. In case of arbitration in the purchase of said street railroad, the City shall give at least six months' written notice of its

intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing within thirty days thereafter, one arbitrator. The two, within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator, or on the failure of the two arbitrators to name the third, the Probate Judge of Cuyahoga County may name either or both, as the case may be, upon the application of the City. In case of the death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SEC. 7. The value of said street railroad shall be obtained as follows: The cost of reproduction shall be estimated, and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street pavements to the extent paid for by the grantee.
6. Rolling stock.
7. Miscellaneous.

To this total valuation of the above items shall be added twenty (20) per cent., but in arriving at the said valuation the franchises and privileges granted by the City shall not be estimated or paid for.

SEC. 8. The city reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

32 SEC. 9. The City reserves the right to grant to any other party or parties the joint use of not to exceed ten per cent. of the length of the route herein described, on such terms as may be fixed by the Council in case the parties do not agree; but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SEC. 10. If at the expiration of this franchise no extension or renewal thereof be granted by the city to the then owner, and the City has not itself acquired the property, then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right, and be under obligations to purchase said railroad under the terms providing for the purchase by the City as herein contained.

SEC. 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the city Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, lists of names of stockholders, showing their respective holdings in said company, and shall be permited to ascertain from said records and books the actual amount or amounts invested, and the amount of capital stock issued, the cost of the property, liabilities, assets, profits and losses, income, expenses, and cost of betterments.

SEC. 12. The maintenance and operation of the street railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railway ordinances now in force, except as the same are herein or hereafter modified, and shall be subject to the future ordinances and regulations of the Council.

SEC. 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and decribed on the 23rd day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona fide* legal proceedings and other unavoidable delays over which the said grantee has no control; but any delay or failure of the grantee to begin the operation of said railroad on the 23rd day of March, 1905, due to any legal proceedings or unavoidable cause preventing the same, and over which the grantee has no control, shall not be deemed by the council ground for forfeiture of this grant.

SEC. 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires, and appliances erected in the highways along the route herein described, and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent. added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valua-
33 tion, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SEC. 15. Whenever in the above ordinance the name of The Forest City Railway Company occurs, or whenever the said The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said The Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SEC. 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SEC. 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11/1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor, Jan. 20, 1904.

And said the Forest City Railway Company accepted said ordinance and has given out in the public prints and otherwise that it is now the owner of and has the right beginning on the 22nd day of March, 1905, to operate upon the streets in said ordinance described and which are now occupied by your orator, and to oust your orator from the possession thereof as in said ordinance provided; and, acting in pursuance of the terms of said last mentioned ordinance, the said Forest City Railway Company has made demand upon your orator to agree with it as to the value of the tracks, wires, poles and other appliances now owned by your orator in said streets, to the end that the same may be purchased by The Forest City Railway Company as in said Ordinance provided; and your orator having declined to recognize in any manner the validity of said ordinance or to negotiate with reference to the value of its property as therein provided, The Forest City Railway Company has made formal
34 application in the city council for the assistance of the city authorities in compelling your orator to abide by the provisions of said illegal ordinance. And in and by said formal application said The Forest City Railway Company has asked the city to proceed at the earliest practicable moment to adopt such proceedings as may be necessary to deliver possession to said Forest City Railway Company of the streets and highways described in said ordinance and which are now occupied by your orator, as of right, as in this bill set forth, it is entitled to occupy them until the first day of July, 1914.

XXIX.

Your orator shows that said ordinance of January 11th, 1904, by which it is so sought to oust your orator from the right to continue the operation of its system of railroads upon the streets in said ordinance described is void, because contrary to and in violation of the Constitution of the United States, in this,—that said ordinance is a law of the state of Ohio in direct violation and contravention and impairment of the contract obligations existing between your orator and said defendant City of Cleveland, as in this bill hereinbefore set forth, and impairs the contract rights of your orator in this—that whereas, your orator is entitled, by virtue of its said contracts with said City of Cleveland, to maintain and operate its said railway in all of the streets in said ordinance of January 11th, 1904, described until July, 1914, the provisions of said ordinance oust your orator from the occupation of said streets and attempt to require the turning over of its property upon an agreed valuation to said defendant The Forest City Railway Company on or before the 22nd day of March, 1905.

35 Your orator further shows that the passage of said ordinance of January 11th, 1904, is in furtherance of a combination and conspiracy between said defendant, The Forest City Railway Company, and the municipal authorities of the defendant City of Cleveland, for the avowed purpose, as frequently given out in the public prints by the municipal authorities, of depriving your orator of the right to operate in the streets in said ordinance described unless

it will submit to unreasonable requirements as to rates of fare with reference to its other lines of railway in the city of Cleveland, and with respect to other lines in regard to which it is not even claimed by the defendant city that its rights have terminated or will terminate in the near future; and your orator alleges that, unless restrained by the order of this Court, said The Forest City Railway Company and said City of Cleveland will proceed, in accordance with the provisions of said ordinance, to compel the abandonment by your orator of the operation of its lines of street railway upon the streets in said ordinance described, thereby depriving it of the benefit of its existing contract rights, destroying the unity of its system, and making it impossible to carry out the other existing contracts between it and the city with reference to carrying passengers upon the different lines of railway operated by it and established by the City of Cleveland; that the passage of said illegal ordinance and the contemplated and threatened enforcement of the same have created a cloud upon your orator's title to the right to operate its railways in the City of Cleveland, and have seriously impaired the market value of the obligations of your orator, both stock and bonds, now distributed and outstanding among hundreds of investors; that before it could at law demonstrate the invalidity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble
36 would arise over your orator's refusal to recognize the validity of said ordinance; that said ordinance having already by its terms gone into effect and requiring your orator to take action looking to the fixing of a price upon its property and the turning over of the same to the defendant The Forest City Railway Company, your orator will be compelled to submit to said ordinance or run the risk of the city of Cleveland, by its police force, taking possession of said property and ousting your orator from said streets, and, as your orator is informed and believes and alleges, it is the intention of the city authorities to enforce the terms of said ordinance and put The Forest City Railway Company in possession of said streets and of your orator's property, and oust your orator therefrom by physical force if necessary unless it shall submit to the terms of said illegal ordinance.

Your orator submits that it is without adequate remedy at law in the premises, there being no proceeding known to the law which your orator can, with safety to its investments and the continued and uninterrupted service to the public over its system of railways, and with reasonable promptness, determine the proper construction of the terms of all the contracts hereinbefore in this bill set forth and establish the right, which it here asserts, to continue the operation of said lines until the right so to do is terminated, as in this bill set forth; that only in a court of equity can the rights of your orator, and with justice to it and the public and with reasonable promptness, be adequately adjudicated; that the cloud existing upon your orator's title is a continuing and irreparable and serious damage to it in the management of its property; that the threat of the City of Cleveland to oust it from said important and integral part of its system
37 on the 22nd day of March, 1905, is a menace to its investment which not only in large measure destroys the value of

its securities, but embarrasses your orator with reference to future plans as to the operation of its property by way of improvements and equipment, all of which are contemplated by your orator upon the faith of the validity of the right which it in this bill asserts to the continued operation of said lines of railroad; and your orator submits that it has no adequate remedy at law against the enforcement of said ordinance.

In consideration whereof, and inasmuch as your orator is without adequate remedy at law in the premises, and can have adequate relief only in a court of equity,—to the end—therefore, that the defendants herein may answer the several matters hereinbefore set forth, and that this court may decree that said ordinance of said defendant city entitled

"Ordinance No. 42240.

An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:"

passed January 11th, 1904, is null and void and of no effect as respects your orator,—

Your orator prays that the city of Cleveland, the Mayor and Common Council of said city, and all officers, agents, attorneys, representatives and departments of said city and their respective agents, representatives and employés, and the city solicitor of said city and his associates, assistants and agents, and their respective successors in office; and the said The Forest City Railway Company, and its officers, agents, servants and employés; be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect;

And from instituting or authorizing or directing any suit, action or actions, or any proceeding against your orator, the object
38 or purpose of which or relief sought by said action being to put said alleged ordinance into effect or to enforce any of its provisions, or to compel your orator to cease the operation of its existing lines of road upon the streets in said ordinance mentioned or any of them;

And from in any manner interfering, directly or indirectly, with the continued and peaceable occupancy by your orator of the streets in said ordinance mentioned, for the operation of its lines of street railway therein as now conducted.

And that, upon final hearing, said ordinance may be by decree of this court adjudged to be null and void.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland and the Mayor and Common Council, and all officers, agents, employés, representatives, and departments of said city, and the said The Forest City Railway Company and its officers, agents, servants and employés, and each of them, be enjoined and restrained as hereinbefore prayed;

And that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

May it please Your Honors to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this Honorable Court, directed to the defendants, the City of Cleveland and said The Forest City Railway Company, commanding said defendants to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS — DEMPSEY,
Solicitors for Complainant.

39 THE STATE OF OHIO, *Cuyahoga County, ss:*

H. J. Davies, being duly sworn, says that he is Secretary of The Cleveland Electric Railway Company, the complainant in the foregoing bill of complaint; that he makes this affidavit as such officer on behalf of said Company; that he has read the said bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters and things therein stated to be upon information and belief, and, as to those matters, he believes them to be true.

H. J. DAVIES.

Sworn to and subscribed before me this 20th day of March A. D., 1905.

CHARLES C. OWENS,
[SEAL.] *Notary Public.*

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Bill of Complaint. Filed Mar. 21, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

40 *(Subpœna in Chancery.)*

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting:

You are hereby commanded to summon The City of Cleveland and The Forest City Railway Company, citizens of and resident in the State of Ohio, if they be found in your District, to be and appear in the Circuit Court of the United States for the Northern District of Ohio, aforesaid, at Cleveland, on the first Monday in June, next, to answer a certain Bill in Chancery filed and exhibited in said Court, against it by The Cleveland Electric Railway Company, a citizen of

and resident in the State of Ohio. Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of March, A. D. 1905, and in the 129th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
By B. C. MILLER,
Deputy Clerk.

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the Clerk's office of said Court on or before the first Monday of May, 1905, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

(Endorsements When Issued.)

United States Circuit Court, Northern District of Ohio. No. 6851. The Cleveland Electric Railway Company *vs.* The City of Cleveland *et al.* Subpœna in Chancery. Appearance Day, First Monday in May, 1905, Answer Day, First Monday in June, 1905. Squire, Sanders & Dempsey, Complainant's Attorneys.

41 (Endorsements When Returned.)

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Cleveland, Ohio, March 21, 1905, and on the same day and place, I served the same on the within named The Forest City Railway Company by handing a true and certified copy hereof with all the endorsements thereon to C. H. Miller, Vice President of said Company, the President, chairman of the board of directors or trustees, Secretary or other chief officer could not be found within my district; and on The City of Cleveland, by handing a copy aforesaid to Tom Johnson, Mayor of said city of Cleveland.

F. M. CHANDLER,
U. S. Marshal,
By F. M. FANNING, *Deputy.*

Fees.

Service	$4.00
Travel	.12
	$4.12

Returned and filed Mar. 25, 1905.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

(Stipulation for Costs.)

Circuit Court of the United States, Northern District of Ohio.

No. 6851.

THE CLEVELAND ELECTRIC RY. CO.
vs.
THE CITY OF CLEVELAND ET AL.

It is hereby stipulated and agreed for the benefit of whom it may concern, that the signers hereof shall be and are bound in the sum of Two Hundred & Fifty (250) Dollars, condition- that the complainant above named shall pay all costs that may be awarded against him by this court, or in case of appeal by the appellate court and for which he may be liable, whether due to the United States, its officers, or any other person, within ten days after the same become due and payable.

WM. B. SANDERS.

(Endorsements:) No. 6851. The Cleveland Electric Ry. Co. *vs.* The City of Cleveland, *et al.* Stipulation for costs. Approved and filed M'ch 21, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

42 *(Temporary Restraining Order.)*

February Term, A. D. 1905, to wit, March 23, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

This day this cause came on to be heard upon the verified bill of complaint and upon the motion of the complainant for a temporary injunction as prayed for in the bill.

And it is thereupon ordered that the defendants be and appear before this Court on the 8th day of April, 1905, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, and show cause why the motion for a temporary injunction herein made should not be granted.

And in the meantime, and until said motion for a temporary injunction is heard and disposed of upon Complainant giving bond to the approval of the Clerk in the sum of $10,000.00 it is ordered that the defendants and each of them, their officers, agents and em-

ployés, be and they are hereby restrained, as prayed for in the bill of complaint herein, from in any manner seeking to enforce the ordinance in the bill of complaint described as ordinance No. 42240 entitled:

"An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following Streets;"

and from in any manner, directly or indirectly, interfering with the continued and peaceable occupancy by the complainant of the streets in said ordinance mentioned for the operation of its lines of street railway therein as now conducted.

43 (*Bond on Temporary Restraining Order.*)

Know all men by these presents, that we, —— ——, are held and firmly bound unto The City of Cleveland and The Forest City Railway Company in the sum of Ten Thousand Dollars to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 23 day of M'ch *23"* A. D. 1905.

The condition of the above obligation is such that, whereas, the said The Cleveland Electric Railway Company citizen- of the State of Ohio have filed in the Circuit Court of the United States for the Northern District of Ohio a Bill in Chancery against the said The City of Cleveland and The Forest City Railway Company, and have obtained an allowance of an Restraining order, as prayed for in said Bill, from the said Circuit Court.

Now if the said The Cleveland Electric Railway Company shall abide the decision of said Court in said cause, and pay all moneys and costs which shall be adjudged against it in case the said Restraining Order shall be determined, to have been wrongfully issued then these presents shall be void; otherwise to remain in full force.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY, *Its Att'ys.*
[SEAL.]
WM. B. SANDERS. [SEAL.]
D. R. HANNA. [SEAL.]

(Endorsements:) U. S. Circuit Court, Northern District of Ohio, No. 6851. The Cleveland Electric Railway Co. *vs.* The City of Cleveland, Ohio. Injunction bond. Approved and filed Mar. 23, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

44 (*Certified Copy of Temporary Restraining Order Served.*)

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

At a stated term of the Circuit Court of the United States, within and for the Eastern Division of the Northern District of Ohio, be-

gun and held at the City of Cleveland, in said District, on the first Tuesday in February, being the 7th day of said month in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America, the one hundred and twenty-ninth, to-wit: on Thursday, the 23rd day of March, A. D. 1905—Present: Honorable Robert W. Tayler, United States District Judge—among the proceedings then and there had were the following, to-wit:

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

This day this cause came on to be heard upon the verified bill of complaint and upon the motion of the complainant for a temporary injunction as prayed for in the bill.

And it is thereupon ordered that the defendants be and appear before this Court on the 8th day of April, 1905, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, and show cause why the motion for a temporary injunction herein should not be granted.

And in the meantime, and until said motion for a temporary injunction is heard and disposed of upon complainant giving bond to the approval of the Clerk in the sum of $10,000.00, it is ordered
that the defendants and each of them, their officers, agents
45 and employés, be and they are hereby restrained, as prayed for in the bill of complaint herein, from in any manner seeking to enforce the ordinance in the bill of complaint described as ordinance No. 42240 entitled:

"An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following Streets;"

and from in any manner, directly or indirectly, interfering with the continued and peaceable occupancy by the complainant of the streets in said ordinance mentioned for the operation of its lines of street railway therein as now conducted.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original Temporary Restraining Order entered upon the Journal of the proceedings of said Court in the therein entitled Cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said Court, at Cleve-

land, in said District, this 23rd day of March, A. D. 1905, and in the 129th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
By THOMAS M. SHERLOCK,
Deputy Clerk.

(Endorsements When Issued.)

No. 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company *vs.* The City of Cleveland, and The Forest City Railway Company. Certified copy of Temporary Restraining Order.

(Endorsements When Returned.)

46 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Cleveland, Ohio, March 23, 1905, and on the same date and place I served the same on The City of Cleveland by handing a true and certified copy -hereof with all the endorsements thereon to Tom L. Johnson, Mayor of said city of Cleveland, and on the within named The Forest City Railway Company by handing a copy as aforesaid to C. H. Miller, Vice President of said company, the president, chairman of the board of directors or trustees, secretary or other chief officer could not be found within my district.

F. M. CHANDLER,
U. S. Marshal,
By P. D. SAMPSELL, *Deputy.*

Fees.

Service	$4.00
Travel	.18
	$4.18

Returned and filed Mar. 25, 1905.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

(*Order Continuing Cause.*)

February Term, A. D. 1905, to wit, April 3, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RY. CO.
vs.
CITY OF CLEVELAND ET AL.

This cause is continued to the next term of this court.

47 (*Answer of The Forest City Railway Company.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of The Forest City Railway Company, one of the defendants in the above entitled cause, to the bill of complaint of The Cleveland Electric Railway Company filed against it and the City of Cleveland in the Circuit Court of the United States for the Northern District of Ohio.

This defendant now and all times hereafter reserving to itself the benefit of all rights of demurrer, and of objection to the said Bill for the many errors and insufficiencies therein, for answer thereto, or so much thereof as this defendant is advised it is material and necessary for it to answer, says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said State; also that the City of Cleveland is a municipal corporation under the laws of the State of Ohio; and that this defendant, The Forest City Railway Company, is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said City of Cleveland.

48 II.

This defendant admits that this is a civil action and that the amount in *the* controversy, exclusive of interest and costs, exceeds

the sum of Five Thousand Dollars ($5000.00) but denies that this is a controversy arising under the Constitution and laws of the United States, or that the complainant seeks relief against this defendant or the City of Cleveland by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant in violation of any article of the Constitution of the United States.

III.

This defendant admits that Garden street and Ohio street as referred to in the several ordinances mentioned and pleaded in the complainant's bill and otherwise referred to therein were subsequently united under one name, and designated "Central Avenue" by which name the said former Garden street and Ohio street are now known.

IV.

This defendant admits that the complainant is a consolidated Company organized in the year 1893 and that it was formed by the consolidation of certain constituent companies which, at the time of and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof as provided by the statute law of the State of Ohio, the complainant became and is possessed of all the rights, franchises, privileges and property possessed by said constituent companies; but this defendant avers that the said consolidated Company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of said constituent companies and of the franchises granted to said
49 constituent companies and each of them by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation are substantially as set forth in paragraph IV of its bill; but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland, no one of which expired before the first day of July, 1914.

V.

This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated Company formed by the consolidation of The Woodland Avenue & West Side Street Railway Company and The Cleveland City Cable Railway Company; that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue & West Side line, and that The Cleveland

City Cable Railway Company was operating lines from the Public Square out Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Cleveland City Cable Railway Company was operating expired before January, 1910.

This defendant denies each and every of the other allegations and inferences of fact and law set forth in paragraph V of the complainant's bill.

VI.

This defendant admits that the total mileage of single track which is operated by complainant as the successor in interest of all
50 the various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to this defendant and set forth in paragraph XXVIII of complainant's bill is about twelve (12) miles.

VII.

This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railroad Company, a corporation incorporated in the year 1859, and that on November 1, 1859, July 3, 1860, and April 15, 1862, the said The East Cleveland Railroad Company received from the Council of the City of Cleveland grants of permission to construct and operate a line of street railway beginning at the easterly city limits at Willson avenue; thence via Euclid avenue, Case avenue, Prospect street, Erie street and Euclid avenue to and around the southerly and westerly sides of the Public Square to and on Superior street and through Superior street to Water street; that the grants so made were to continue for a period of twenty years from the 20th day of September, 1859, expiring on the 20th day of September, 1879, and that under the grant so made, the lines of street railway therein authorized were afterwards constructed.

This defendant denies each and every other allegation and inference of fact and law set forth in paragraph VIII of the complainant's bill not herein specially admitted to be true.

51 IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in complainant's bill, The East Cleveland Railroad Company received from the Trustees of East Cleveland Township, which Township adjoined the City of Cleveland upon the east and has since become a part of said City, per-

mission to construct and operate a street railroad on Euclid Avenue from its intersection with Willson avenue easterly to Doan's Corners, so-called, now the corner of Euclid avenue and Fairmont street, and that under said grant the line of railway therein authorized was afterwards constructed, connecting at Willson avenue or the easterly limits of the City of Cleveland with the street railway of said Company constructed under the authority of the ordinance mentioned and described in paragraph VIII of the complainant's bill and of this answer.

This defendant admits that the line of street railway constructed under and by virtue of the ordinances of the City of Cleveland and of the right acquired from the Trustees of East Cleveland Township from Water Street to Doan's corners now Euclid Avenue and Fairmount street, as mentioned and described in paragraphs VIII and IX of the complainant's bill and of this answer are referred to in many of the ordinances subsequently passed by the City of Cleveland as the "main line" of The East Cleveland Railroad Company, but this defendant does not admit that the "main line" as used in all of the ordinances means the line aforesaid.

This defendant denies each and every allegation and inference of fact and law, except as herein expressly admitted, set forth in the ninth paragraph of the complainant's bill.

52 X.

This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of the City of Cleveland, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with Garden street; thence easterly along the center of Garden street to and across Willson avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date of the passage of said ordinance expiring January 14, 1888; and that the right during said period of twenty years from the date of said ordinance was also given "to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of the City of Cleveland granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining the consent in writing of the majority or property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare, as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and
53 inference of fact and law not herein expressly admitted to be true as set forth and pleaded in paragraph X of complainant's bill.

XI.

This defendant further admits that after the construction of the street railway on Garden street, pursuant to the ordinance described in paragraph X of the complainant's bill and of this answer, the Council of the Village of East Cleveland which adjoined the City of Cleveland on the east and is now a part of said City, granted to the said The East Cleveland Railroad Company permission "to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in said Village, to-wit, beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue; running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street," and that said grant was to expire in twenty years from the date of said ordinance.

This defendant admits that the aforesaid grant from the Village of East Cleveland was duly accepted by the said The East Cleveland Railroad Company and the line thereby authorized was constructed and put in operation, but this defendant denies that the same was authorized or constructed as an extension of the main line or any line of The East Cleveland Railroad Company; but on the contrary this defendant avers that the same was granted and authorized as an original grant for a new and independent line of street railway.

This defendant denies each and every other allegation or inference of fact or of law not herein expressly admitted to be true as set forth in paragraph XI of complainant's bill.

54 XII.

This defendant is not advised as to the agreement or the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 7, 1870, described in paragraph XII of the complainant's bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of the City of Cleveland passed a resolution which was duly accepted by said Company whereby permission was granted to The East Cleveland Railroad Company "to lay a double track street railroad in Ohio street from their present track in Brownell street to Erie street, and in Erie street from Ohio street to Prospect street to connect with their main track at this point;" that as one of the conditions of said grant of permission, it was provided "that said company shall on completion of said tracks in Erie street and Ohio street take up and remove the present track in Brownell street from

the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority, did construct a double track street railroad as therein provided, and on the completion thereof, did take up and remove the existing track in Brownell street between Prospect and Ohio streets.

This defendant denies each and every other allegation and inference of fact and law, except as herein expressly admitted to be true as set forth in paragraph XIII of the complainant's bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of the
55 City of Cleveland and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden street branch of its road to the easterly end thereof along Garden street to Baden avenue, and along Baden avenue to Quincy street and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies every other allegation or inference of fact and law, except as herein expressly admitted contained in the 14th paragraph of the complainant's bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of the City of Cleveland passed another ordinance entitled, "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;" that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty five years from and after the 20th day of September, 1879; and the said ordinance authorized the East Cleveland Railroad Company "to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the city of
56 Cleveland commencing on Superior street at the intersection of Water street; thence through Superior to and around the southwest corner of Monumental Square to Euclid avenue; thence through said Avenue to Erie street; thence through Erie street to Prospect street; thence through said Prospect street to Case avenue;

thence through said Case avenue to Euclid avenue; thence through and -long said Euclid avenue to Willson avenue;" and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part hereof other than that explicitly mentioned and described in the ordinance itself; and this defendant denies each and every allegation and inference of fact and law set forth in paragraph XV of complainant's bill, except as herein expressly admitted and pleaded.

XVI.

This defendant further admits that on or about March 22, 1880, another ordinance was passed by the Council of the City of Cleveland, and accepted by said Company; that it was entitled, "an ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and along said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its
57 Garden street branch for the period of twenty-five years from and after the passage of this ordinance."

This defendant denies each and every allegation and inference of fact or of law set forth in paragraph XVI of complainant's bill, except as herein expressly admitted and pleaded.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company entitled: "an ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it by said ordinance authorized and empowered The East Cleveland Railroad Company to extend "the Garden street branch of its railway from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad with all necessary switches, turnouts and turntables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden street branch, and that the words "its main line" means that line of street railway owned by the East Cleveland Railroad Company which was

constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the Complainant's bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the grant from said main line was the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy street east of Lincoln avenue were limited to expire.

This defendant denies each and every allegation and in-
58 ference of fact and law contained in paragraph XVII of the complainant's bill not herein expressly admitted and pleaded.

XVIII.

This defendant admits that on or about June 17, 1887, the Council of the City of Cleveland passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway," that said ordinance was duly accepted by said Company; that it authorized and empowered said company "to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue upon Garden street in an easterly direction along and upon said Garden street to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden street main line."

This defendant avers that the Garden street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of the City of Cleveland passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XVIII of the complainant's bill, except as herein expressly admitted and pleaded.

XIX.

This defendant admits that on or about July 13, 1888,
59 the Council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to the City of Cleveland by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid avenue from Willson avenue to the city limits, and on

Cedar avenue from The Cleveland & Pittsburgh Railroad Company's tracks to a point about 1500 feet easterly from Fairmount street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned;" that the ordinance passed in *pursuance thereof is entitled:* "*An ordinance granting* to The East Cleveland Railroad Company the right to construct and operate an electric railway on Euclid and Cedar avenues;" that said ordinance recites the communication from the Street Railroad Company already set forth, and granted permission to said Company "to propel and operate the cars upon the following named streets in said City, to-wit: Euclid avenue from Willson avenue easterly to the City limits, Cedar avenue from a point near the Cleveland & Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street;" that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines;" and it was further provided by Section VIII thereof that whenever the Council "shall so re-
60 quire the said Company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XIX in complainant's bill, except such as are herein expressly admitted and pleaded.

XX.

This defendant admits that on or about March 10, 1890, the City Council of the City of Cleveland passed another ordinance authorizing The East Cleveland Railroad Company to substitute electrical motive power for horse power upon the Garden street branch of its railway; that said ordinance is entitled: "An ordinance granting

The East Cleveland Railroad Company the right to substitute electric motive power for horse power on its Garden street branch;"
61 that said ordinance authorized said Company "to operate its Garden street branch by electricity, *i. e.*, from the intersection of Prospect and Erie streets, along Erie street to Ohio street, along Ohio street to Brownell street, along Brownell street to Garden street, and along Garden street to Lincoln avenue, also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills Avenue."

This defendant denies each and every allegation and inference of fact and law contained in paragraph XX of complainant's bill not herein expressly admitted and pleaded.

XXI.

This defendant admits that on or about the 30th day of March, 1891, the Council of the City of Cleveland passed another ordinance which was duly accepted by said The East Cleveland Railroad Company granting the right to said Company to construct and operate a second or additional track upon Central avenue (formerly known as Garden street) from the east line of Willson avenue to the right of way of The Cleveland & Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central avenue at Willson avenue and at The Cleveland & Pittsburgh Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the right herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was con-
62 structed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's bill and of this answer, then this defendant avers that it was not within the power of the Council in extending the track of the Garden street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of

fact and law contained in said paragraph XXI of said bill, except as herein expressly admitted and pleaded.

XXII.

This defendant admits that on or about April 20, 1891, the Council of the City of Cleveland passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills avenue, and authorized said Company to connect said tracks with the tracks now laid upon New street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the
63 expiration of the grants for said Company's tracks on said Quincy street east of Lincoln avenue, to-wit: July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy street east of Lincoln avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's bill and of this answer, and by the terms of which the rights thereby granted expired on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said Company's tracks on Quincy street east of Lincoln avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation of fact and law contained in paragraph XXII not herein expressly admitted and pleaded.

XXIII.

This defendant admits that on or about the 17th day of July, 1893, the Council of the City of Cleveland passed an ordinance granting to The Cleveland Electric Railway Company, the successor to The East Cleveland Railway Company, permission to extend and operate its double track street railroad in Prospect street from Erie to Ontario street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets; thence along Seneca street to Lake street; and thence along Lake street to Ontario street; and thence along Ontario street to the center of Monumental Park connecting with the present tracks in Ontario street; and also to construct and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complain-
64 ant; that it was also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars

to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock a. m., and that these provisions should apply to and be a condition on each and all the grants made by the Council of said constituent companies or either of them.

This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "Devil strip" on all streets and street intersections wherein any tracks or any of the lines of said Company are laid in a manner satisfactory to said Director, but this defendant denies that this requirement of any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double street railroad had been originally constructed as a part of the Garden street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of said city required all cars operated upon said Garden street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and in-
65 ference of fact and law contained in paragraph XXIII of complainant's bill not herein expressly admitted and pleaded.

XXIV.

This defendant further admits that on February 19, 1894, the Council of the city of Cleveland passed an ordinance entitled: "An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson avenue," and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hough and Willson avenues to the northerly terminus of said Willson avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue, that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of

cars on said Willson avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provide as follows: "A passenger on any car operated on any part of said Willson avenue, on the payment of one fare, either in
66 cash or by ticket, shall be entitled without additional or extra carge, to be transferred to any other line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line and to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson avenue, and that the two companies were required to widen the roadway of said Willson avenue between Euclid avenue and Scovill avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIV of complainant's bill except such as are herein expressly admitted and pleaded.

XXV.

This defendant admits that on or about June 25, 1894, the Council of the City of Cleveland passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, and being operated
67 in Quincy street and is therein referred to, was the Garden street branch of the East Cleveland Railroad Company; and which had been constructed and operated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate with the grant for said Company's present line in Quincy street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXV of complainant's bill except such as are herein expressly admitted and pleased.

XXVI.

This defendant admits that on the 29th day of May, 1893, the Council of the City of Cleveland passed a resolution consenting to

the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway & Newberg Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburg Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advise
68 of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject, that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *Vice-Pres.*"

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:—

That only one fare shall be charged for a continuous ride on or

over any line of railway formerly owned by any other of said
69 constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, the complainant accepted the same in writing, but it denies each and every allegation and inference of fact and law contained in said paragraph XXVI of the complainant's bill not herein expressly admitted to be true.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation or inference of fact and law contained in paragraph XXVII of the complainant's bill not herein expressly admitted to be true.

XXVIII.

This defendant admits that the Council of the City of Cleveland on the 11th day of January, 1904, passed an ordinance which is in the words and figures as set forth in paragraph XXVIII of the complainant's bill; that this defendant accepted said ordinance, and that it claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate upon the streets described in said ordinance, and which are now occupied by the com-
plainant, and to oust the complainant from the possession
70 thereof; also that acting in pursuance of the terms of said ordinance, this defendant has made demand upon the complainant to agree with it as to the value of the tracks, wires, poles and other appliances in said streets to the end that the same may be purchased by the defendant and paid for as provided in said ordinance; also that the complainant has declined to negotiate with reference to the value of its property as therein described or to vacate the streets at the expiration of its franchises therefor; and that this defendant has made formal application to the Council of the City in which it has asked that the City proceed at the earliest practicable moment to have the value of said tracks, poles wires and appliances erected in the highways along the routes described in the ordinance adjudicated by some Court, and also to adopt such proceedings as may be necessary to deliver possession of said streets and highways to this defendant.

This defendant denies all the other allegations and inferences of fact and law contained in paragraph XXVIII of complainant's bill, except such as are herein expressly admitted to be true.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until July 1914, or to any date subsequent to the 22nd day of March, 1905.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant in furtherance of any combination or conspiracy with the municipal authori-
71 ties of the City of Cleveland, or any one else, for the purpose of depriving the complainant of its right to operate in the streets described in said ordinance unless it will submit to unreasonable requirements as to its rates of fare on its other lines of railway in the City of Cleveland; but this defendant avers that it has applied for and obtained said ordinance in good faith and as soon as it lawfully can obtain possession of said routes, expects to maintain and operate its system of street railway thereon according to the terms and conditions of said ordinance.

This defendant admits that in accordance with the provision of said ordinance, it will use all lawful means to obtain possession of the rights granted to it by said ordinance, and will maintain and operate the lines of street railway upon the streets described therein; but it denies that so doing will deprive the complainant of the benefit of any existing contract rights or that it will make it impossible for the complainant to carry out other existing contracts with the city according to the true intent and effect thereof. It also denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble would arise over the complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in complainant's bill, it is without adequate remedy at law.

This defendant also denies all of the allegations and inference- of fact and law contained in paragraph XXIX of the complainant's bill not herein expressly admitted to be true.

And now having fully answered the complainant's bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

[CORPORATE SEAL.]

THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *Pres't.*

GARFIELD, HOWE & WESTENHAVER, *Counsel.*

72 STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn deposes and says that he is the President of the defendant Company, The Forest City Rail-

way Company, and that the facts and allegations contained in the foregoing answer are true as he verily believes.

[NOTARIAL SEAL.] M. J. RUDOLPH,
Notary Public.

(Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendant. Answer of the Forest City Railway Co. Filed Apr. 7, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Cleveland, O. Attorneys for Forest City Ry. Co.

73 (*Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the city of Cleveland, one of the defendants in the above entitled cause, to the Bill of Complaint of The Cleveland Electric Railway Company, filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio.

This defendant, now and at all times hereafter reserving to itself the benefit of all rights of demurrer and of objection to the bill filed herein for the many errors and insufficiencies therein, for answer thereto and to so much thereof as this defendant is advised it is material and necessary for it to answer, answering says:

I. This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said state; that the Forest City Railway Company is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said city, and that the City of Cleveland this defendant, is a municipal corporation under the laws of the State of Ohio.

II. This defendant admits that this is a civil action and that the amount in controversy, exclusive of interest and costs, exceeds
74 the sum of Five Thousand Dollars ($5,000.00), but denies that this is a controversy arising under the constitution of the United States, or that the complainant seeks relief against this defendant, or The Forest City Railway Company by reason of an

attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing the obligation of any contract of the complainant in violation of any article of the constitution of the United States.

III. This defendant admits that Garden Street and Ohio Street, as referred to in the several ordinances mentioned and pleaded in complainant's bill, and otherwise referred to therein, were subsequently united under one name and designated Central Avenue, by which name the said former Garden Street and Ohio Street are now known.

IV. This defendant admits that the complainant is a consolidated company, organized in the year 1893, and that it was formed by the consolidation of certain constituent companies, which at the time of and prior to such consolidation, owned and operated street railways in the City of Cleveland, and that by the terms of such consolidation, and the force and effect thereof, as provided by law, the complainant became and is possessed of all the rights, privileges, franchises and property possessed by said constituent companies; but this defendant avers that the said consolidated company also became and is liable, and subject to all the burdens, debts, liabilities and conditions of each of said constituent companies, and of the franchises granted to said constituent companies and each of them, by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation, are substantially as
75 set forth in paragraph IV of the complainant's bill, but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland authorizing the continued operation of said roads for a period of years, no one of which grants expired before the 1st day of July, 1914.

V. This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights, and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of The Woodland Avenue and West Side Street Railway Company and The Cleveland City Cable Railway Company; that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue and West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue and West Side line, and that The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Cleveland City Cable Railway Company was operating expired before January, 1910.

This defendant denies each and every of the other allegations and inferences of fact and law set forth in paragraph V of the complainant's bill.

VI. This defendant admits that the total mileage of single track

which is operated by complainant as the successor in interest of all the various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to The Forest City Railway Company, and set forth in paragraph XXVIII of complain-
76 ant's bill is about twelve (12) miles.

VII. This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's bill.

VIII. This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railroad Company, a corporation incorporated in the year 1859, and that on November 1, 1859, July 3, 1860 and April 15, 1862, the said The East Cleveland Railroad Company received from the Council of the City of Cleveland grants of permission to construct and operate a line of street railway beginning at the easterly city limits at Willson Avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street and Euclid Avenue to and around the southerly and westerly sides of the Public Square to and on Superior Street and through Superior Street to Water Street; that the grants so made were to continue for a period of twenty years from the 20th day of September, 1859, expiring on the 20th day of September, 1879, and that under the grant so made, the lines of street railway therein authorized were afterwards constructed.

This defendant denies each and every other allegation and inference of fact and law set forth in paragraph VIII of the complainant's bill not herein specially admitted to be true.

IX. This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in complainant's bill, The East Cleveland Railroad Company received from the Trustees of East Cleveland Township, which Township adjoined the City of Cleveland upon the east and has since become a part of said City, permission to construct and operate a street railroad on Euclid Avenue from its intersection with Willson Avenue easterly to Doan's Corners,
77 so-called, now the corner of Euclid Avenue and Fairmount Street, and that under said grant the line of railway therein authorized was afterwards constructed connecting at Willson Avenue or the easterly limits of the City of Cleveland with the street railway of said Company constructed under the authority of the ordinance mentioned and described in paragraph VIII of the complainant's bill and of this answer.

This defendant admits that the line of street railway constructed under and by virtue of the ordinances of this defendant and of the right acquired from the trustees of East Cleveland Township from Water Street to Doan's corner, now Euclid Avenue and Fairmount Street, as mentioned and described in paragraphs VIII and IX of the complainant's bill and of this answer are referred to in many of the ordinances subsequently enacted by this defendant as the "main line" of The East Cleveland Railroad Company, but this

defendant does not admit that the "main line" as used in all of the ordinances means the line aforesaid.

This defendant denies each and every allegation and inference of fact and law, except as herein expressly admitted, set forth in the ninth paragraph of the complainant's bill.

X. This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of this defendant, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Railroad Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell Streets to connect with the main line of its railroad; thence along the center of said Brownell Street to its intersection with
78 Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date [illegible] passage of said ordinance expiring January 14, 1888; and [illegible] right during said period of twenty years from the date o[illegible]dinance was also given "to continue to use and occupy the str[illegible] avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of this defendant granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining and producing to the Council of this defendant, the consent in writing of the majority of property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare, as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of law and fact not herein expressly admitted to be true as set forth and pleaded in paragraph X of complainant's bill.

XI. This defendant further admits that after the construction of the street railway on Garden Street, pursuant to the ordinance described in paragraph X of the complainant's bill and of this answer, the Council of the Village of East Cleveland which adjoined this defendant on the east and is now a part of this defendant, granted to the said The East Cleveland Railroad Company permission "to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in
79 said Village, to-wit: beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson Avenue; running thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly on said center line to the southerly line of Wade Street," and that said grant was to expire in twenty years from the date of said ordinance.

This defendant admits that the aforesaid grant from the Village of East Cleveland was duly accepted by the said The East Cleveland Railroad Company and the line thereby authorized was constructed and put in operation, but this defendant denies that the same was authorized or constructed as an extension of the main line or any line of The East Cleveland Railroad Company; but on the contrary this defendant avers that the same was granted and authorized as an original grant for a new and independent line of street railway.

This defendant denies each and every other allegation or inference of fact or of law not herein expressly admitted to be true as set forth in paragraph XI of complainant's bill.

XII. This defendant admits that on or about the 2nd day of August, 1870, the Village of East Cleveland made an agreement with The East Cleveland Railroad Company by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and that in said agreement it is recited that said tracks "have been constructed and operated upon the southerly side of the carriageway of said Euclid Avenue, and being an extension or branch of its main road located in the City of Cleveland."

XIII. This defendant admits that on or about March 25, 1873, the Council of this defendant passed a resolution which was duly accepted by said Company whereby permission was granted
80 to The East Cleveland Railroad Company to "lay a double track street railroad in Ohio Street from their present track in Brownell Street to Erie Street, and in Erie Street from Ohio Street to Prospect Street to connect with their main track at this point;" that as one of the conditions of said grant of permission, it was provided "that said company shall on completion of said tracks in Erie Street and Ohio Street take up and remove the present track in Brownell Street from the main track in Prospect Street to Ohio Street, and shall put that portion of Brownell Street so abandoned in as good conditon as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority, did construct a double track street railroad as therein provided, and on the completion thereof, did take up and remove the existing track in Brownell Street between Prospect and Ohio Streets.

This defendant denies each and every other allegation and inference of fact and law, except as herein expressly admitted to be true, as set forth in paragraph XIII of the complainant's bill.

XIV. This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of this defendant and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden Street branch of its road to the easterly end thereof along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track and to equip and operate said extension for twenty
81 years in connection with said branch and its main line; but with the express condition that no increase of fare shall be

charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies every other allegation or inference of fact and law, except as herein expressly admitted contained in the 14th paragraph of the complainant's bill.

XV. This defendant admits that on or about September 15, 1879, the Council of this defendant passed another ordinance entitled, "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland"; that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879, and the said ordinance authorized the East Cleveland Railroad Company "to re-
82 construct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue"; and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that its Council intended by said ordinance, or that on any proper interpretation thereof, that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself; and this defendant denies each and every allegation and inference of fact and law set forth in paragraph XV of complainant's bill, except as herein expressly admitted and pleaded.

XVI. This defendant further admits that on or about March 22, 1880, another ordinance was passed by the Council of this defendant and accepted by said Company; that it was entitled "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway"; that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden Street branch of its railway from the present track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and
83 along said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for the period of twenty-five years from and after the passage of this ordinance."

This defendant denies each and every allegation and inference of fact or of law set forth in paragraph XVI of complainant's bill, except as herein expressly admitted and pleaded.

XVII. This defendant admits that on or about February 9, 1885, the City Council of this defendant passed another ordinance, which was accepted by said company, entitled: "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway"; that it by said ordinance authorized and empowered The East Cleveland Railroad Company to extend "the Garden Street branch of its railway from the termination of its present track at the intersection of Quincy Street and Lincoln Avenue in an asterly direction on and along said Quincy Street to Woodland Hills Avenue, and equip and operate said extension as a single track railroad with all necessary switches, turnouts, and turntables in connection with said branch and its main line, and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by its Council in the langauge last quoted, means the Garden Street branch, and that the words "its main line" means that line of street railway owned by the East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complanant's bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the grant for said main line was the 20th day of September in the year 1904; at which time the rights granted by this defendant on Quincy Street east of Lincoln Avenue were limited to expire.

84 This defendant denies each and every allegation and inference of fact and law contained in paragraph XVII of the complainant's bill not herein expressly admitted and pleaded.

XVIII. This defendant admits that on or about June 17, 1887, its Council passed another ordinance entitled: "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway;" that said ordinance was duly accepted by said company; that it authorized and empowered said company "to extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue upon Garden Street in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."

This defendant avers that the Garden Street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of this defendant passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden Street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XVIII of the complainant's bill, except as herein expressly admitted and pleaded.

XIX. This defendant admits that on or about July 13, 1888, its Council passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon cer-
85 tain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to this defendant by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid Avenue from Willson Avenue to the city limits, and on Cedar Avenue from The Cleveland and Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount Street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned;" that the ordinance passed in pursuance thereof is entitled: "An ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar Avenues;" that said ordinance recites the communication from the street railroad company already set forth, and granted permission to said company "to propel and operate the cars upon the following named streets in said City, to-wit: Euclid Avenue from Willson Avenue easterly to the City limits, Cedar Avenue from a point near The Cleveland and Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount Street;" that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines;" and it was further provided by section VIII that whenever the Council "shall so require, the said Company shall use the same system
86 as herein provided on the entire length of their main and Cedar Avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar Avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "Authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of

the complainant's bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XIX in complainant's bill, except such as are herein expressly admitted and pleaded.

XXI. This defendant admits that on or about the 30th day of March, 1891, its Council passed another ordinance which was duly accepter by said The East Cleveland Railroad Company granting the right to said Company to construct and operate a second or additional track upon Central Avenue (formerly known as Garden Street) from the east line of Willson Avenue to the right of way of The Cleveland and Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at The Cleveland and
87 Pittsburg Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the rights herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden Street line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid Avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's bill and of this answer, then this defendant avers that it was not within the power, of the Council in extending the track of the Garden Street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact and law contained in said paragraph XXI of said bill, except as herein expressly admitted and pleaded.

XXII. This defendant admits that on or about April 20,
88 1891, its Council passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Wood-

land Hills Avenue, and authorized said Company to connect said tracks with the tracks now laid upon New Street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the expiration of the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue to-wit: July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's bill and of this answer, and by the terms of which the rights thereby granted expired on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for such Company's tracks on Quincy Street east of Lincoln Avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation of fact and law contained in paragraph XXII not herein expressly admitted and pleaded.

XXIII. This defendant admits that on or about the 17th day of July, 1893, its Council passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect Street from Erie to Ontario Street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca Streets; thence along Seneca Street to Lake Street; and thence along Lake Street to Ontario Street; and thence along Ontario Street to the center of Monumental Park connecting with the present tracks in Ontario Street; and also to construct
89 and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council of this defendant, on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it was also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply to and be a condition on each and all the grants made by the Council of said constituent companies or either of them.

This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "devil strip" on all streets and street intersections wherein any tracks on any of the lines of said Company are laid in a manner satisfactory to said Director; but this

defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double track street railroad had been originally constructed
90 as a part of the Garden Street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden Street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of this defendant required all cars operated upon said Garden Street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIII of complainant's bill not herein expressly admitted and pleaded.

XXIV. This defendant further admits that on February 19, 1894, its Council passed an ordinance entitled: "An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson Avenue," and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson Avenue from its present tracks at the intersection of Scovill and Willson Avenues to its present tracks at the intersection of Perkins and Willson Avenues, and from its present tracks at the intersection of Hough and Willson Avenues to the northerly terminus of said Willson Avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson Avenue from its present track at the intersection of Woodland and Willson Avenues to its present tracks at the intersection of Lexington and Willson Avenues, and from its present tracks at the intersection of Payne and Willson Avenues to the northerly terminus of
91 said Willson Avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson Avenue as a double track street railroad with electricity as a motive power. This defendant admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson Avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provides as follows: "A passenger on any car operated on any part of said Willson Avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the Company operating the same

which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson Avenue line and to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson Avenue, and that the two companies were required to widen the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIV of complain-
92 ant's bill except such as are herein expressly admitted and pleaded.

XXV. This defendant admits that on or about June 25, 1894, its Council passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy Street from New Street to Willson Avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, was being operated in Quincy Street and is therein referred to, was the Garden Street branch of the East Cleveland Railroad Company, which had been constructed and operated under the various ordinances herein referred to, and that the grant hereby made, it was expressly provided, shall terminate with the grant for said Company's present line in Quincy Street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXV of complainant's bill except such as are herein expressly admitted and pleaded.

XXVI. This defendant admits that on the 29th day of May, 1893, its Council passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway and Newburg Street Railroad Company, The Brooklyn Street Railroad Company and the South-side Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the Council of said defendant, a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March by the consolidation of the

East Cleveland Railroad Company and the Broadway and
93 Newburg Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinance- to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *Vice-Pres.*"

This defendant avers that the resolution passed by its Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved that the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway and Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same, otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, the complainant accepted the same in writing; but it denies each
94 and every allegation and inference of fact and law contained in said paragraph XXVI of the complainant's bill not herein expressly admitted to be true.

XXVII. This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation or inference of fact and law contained in paragraph XXVII of the complainant's bill not herein expressly admitted to be true.

XXVIII. This defendant admits that its Council on the 11th day of January, 1904, passed an ordinance which is in words and figures as set forth in paragraph XXVIII of the complainant's bill; that the defendant, The Forest City Railway Company, accepted said ordinance, and that said The Forest City Railway Company claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate upon the streets described in said ordinance, and which are now occupied by the complainant, and to oust the complainant from the possession thereof; also that acting in pursuance of the terms of said ordinance, the said The Forest City Railway Company has made demand upon the complainant to agree with it as to the value of the tracks, wires, poles and other appliances in said streets to the end that the same may be purchased by the defendant and paid for as provided in said ordinance; also that the complainant has declined to negotiate with reference to the value of its property as therein described or to vacate the streets at the expiration of its franchises therefor; and that the defendant, the Forest City Railway Company, has made formal application to the Council of this defendant in which it has asked that this defendant proceed at the earliest practicable moment to have the value of said tracks, poles, wires and appliances erected in the highways along the routes described in the ordinance ad-
95 judicated by some Court, and also to adopt such proceedings as may be necessary to deliver possession of said streets and highways to the said The Forest City Railway Company.

This defendant denies all the other allegations and inferences of fact and law contained in paragraph XXVIII of complainant's bill, except such as are herein expressly admitted to be true.

XXIX. This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and this defendant, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until July, 1914, or to any date subsequent to the 22nd day of March, 1905.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant, in furtherance of any combination or conspiracy between the authorities of this defendant and the Forest City Railway Company, or any one else, for the purpose of depriving complainant of its right to operate in the streets described in said ordinance unless it will submit to unreasonable requirements as to its rates of fare on its other lines of railway in the defendant City; but this defendant avers that the defendant, The

Forest City Railway Company, applied for and obtained said ordinance in good faith, and that this defendant, the City of Cleveland, in due conformity to all the provisions and requirements of law, did make and pass said ordinance in good faith, to protect the public interests of this defendant and the inhabitants thereof, to bring about a substantial reduction in the rates of fare charged for services rendered by the operation of the street railroad upon the
96 streets in said ordinance recited and upon other terms and conditions in said ordinance appearing considered by the Council of this defendant conducive to the public interest.

And this defendant admits that it is its intention to enforce the terms of said ordinance and to put the defendant, The Forest City Railway Company, in possession of said streets, and to oust the complainant therefrom, and to enforce against the defendant, the Forest City Railway Company, a full compliance with all the obligations undertaken by it to be performed by the acceptance of the said ordinance, and will require said The Forest City Railway Company to maintain and operate the lines of street railway required therein to carry passengers at the rates of fare pr-scribed therein, and to carry out all the other provisions, stipulations, agreements, obligations and covenants of said ordinance; but this defendant denies that by so doing it will deprive the complainant of the benefit of any existing contract rights, or that it will impair any contract existing between it and the complainant, or that it will make it impossible for the complainant to carry out other existing contract with this defendant according to the true tenor, intent and effect thereof. This defendant further denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue, or that great inconvenience and conflict and trouble would arise from the complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in the complainant's bill it is without adequate remedy at law.

This defendant also denies all of the allegations and inferences of fact and law contained in paragraph 29 of the complainant's bill not herein expressly admitted to be true.

And having fully answered the bill of complaint filed
97 against it herein, this defendant prays to be dismissed hence with its reasonable costs in this behalf expended.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER,
Its Attorney.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker, being first duly sworn, deposes and says that he is the duly elected and qualified City Solicitor of the City of Cleveland, defendant in the foregoing action; that the facts, statements and allegations contained in the foregoing answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence this 7th day of April, A. D. 1905.

MANUEL LEVINE, [SEAL.]
Notary Public.

(Endorsements on Answer:) In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. No. 6851. In Equity. The Cleveland Electric Railway Company, Complainant *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Answer of the City of Cleveland, one of the Defendants in the above entitled cause, to the Bill of Complaint of The Cleveland Electric Railway Company, in the Circuit Court of the United States for the Northern District of Ohio. Filed Apr. 7 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. —— ——, Attorney for City of Cleveland.

98 (*Amendment to Bill of Complaint.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Bill of Complaint.

The complainant now comes, and by leave of court, files this amendment to its bill of complaint herein:

1. The complainant shows in addition to the matters and things in its original bill of complaint herein set forth, that prior to the Act of May 14, 1878 (75 Ohio Laws, 359) the right and privilege of operating street railroads within the municipalities of Ohio was granted by the State upon the condition only that the municipality in which any particular road was put in operation should consent thereto; that the statutes of Ohio prior to said Act of May 14th, 1878, contained no limitation of time for the exercise of franchises granted by the State to construct and operate street railroads.

2. Your orator further shows that of the lines of street railroad now owned and operated by it, more particularly described in the bill of complaint herein, the following lines and routes, which it now owns and operates, were acquired by it by grant from the State of Ohio, and with the consent of the defendant, the City of Cleveland, prior to the Act of the Legislature of May 14, 1878; that is to say, prior to May 14, 1878, The East Cleveland Railroad Company was organized with a perpetual charter granted by the State of Ohio and received from the State the right and privilege of maintaining and operat-

99 ing street railroads in the City of Cleveland, and in the Village of East Cleveland by and with the consent of said

City and Village, upon the following streets, that is to say:—Commencing at Superior and Water Streets in said City, thence on and along Superior Street to and around the westerly and southerly sides of the Public Square to Euclid Avenue, thence on and along Euclid Avenue to Erie Street, thence on and along Erie Street to Prospect Street, thence on and along Prospect Street to Case Avenue, thence on and along Case Avenue to Euclid Avenue, thence on and along Euclid Avenue to Lake View Cemetary; also beginning at Superior and Water Streets, thence on and along Superior Street to and around the westerly and southerly sides of the Public Square to Euclid Avenue to Lake View Cemetary; also beginning at Superior thence on and along Erie Street to Ohio Street (now Central Avenue), thence on and along Ohio Street to Garden Street (now Central Avenue), thence on and along Garden Street to Baden Street, thence on and along Baden Street to Quincy Street, thence on and along Quincy Street to New Street (now Van Buren Street) thence on and along New Street to Garden Street; that prior to said May 14th, 1878, said The East Cleveland Railroad Company had constructed and put in operation lines of railroad on and along said streets in pursuance of, and on the faith of said grant from the State of Ohio.

3. Your *favor* further shows that included within the lines of railroad which it so acquired from the State of Ohio prior to May 14, 1878, with the right to operate, is included substantially all of the line of railroad which the defendant, the City of Cleveland, has undertaken to grant to the defendant, The Forest City Railway Company, as appears by the original bill of complaint herein, upon the claim that your orator's rights thereto expired on March 22, 1905, but your orator shows that with respect to all of its lines aforesaid which were built and placed in operation prior
100 to May 14th, 1878, the right which The East Cleveland Company had and received from the State, on the faith of which said lines were built and constructed, was a right in perpetuity which has never been surrendered by said The East Cleveland Railroad Company, or its successors, and that independently of, and in addition to, any right undertaken to be granted or conferred upon The East Cleveland Railroad Company by the City of Cleveland, it possesses, and your orator as it- successor in the possession of the property the right to continue the operation of all its lines of railroad so constructed by The East Cleveland Railroad Company prior to May 14th, 1878.

Your orator, therefore, files this amendment to its original bill and asks the consideration of the court of the facts herein set forth as ground for the relief asked by the original bill herein, and your orator prays, as in the original bill, it has already prayed, for relief in the premises.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for Complainant.

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* The City of Cleveland and The Forest City

Ry. Co. Defendants. Amendment to bill of complaint. Filed April 8th, 1905. Irvin Belford, Clerk. Squire, Sanders & Dempsey, Cleveland, Ohio.

101 *(Opinion of the Court.)*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant-.

Statement of the Case.

The complainant files its bill against the City of Cleveland and The Forest City Railway Company, alleging that the enforcement of a certain ordinance of the City of Cleveland will violate the complainant's rights under the Constitution of the United States, especially by impairing the obligation of its contracts with the City; asking that the ordinance be decreed to be null and void; and, alleging that irreparable injury will be done to it by enforcing the ordinance, and that it has no adequate remedy at law, prays that the defendant, the City of Cleveland, its officers, agents, attorneys, etc., be now temporarily, and hereafter perpetually, enjoined from putting the ordinance, alleged to be illegal, into effect.

The bill sets out the corporate history of the complainant, and the several ordinances of the City upon which its right to operate a street railroad is based, and especially in relation to its right to operate a street railroad on what is called its Garden Street (now Central Avenue) line, which is the immediate subject of this controversy.

An amendment to the bill was filed before the hearing, but this will be treated, and spoken of in this opinion, as part of the bill itself.

102 Upon the filing of the bill, a temporary restraining order was allowed, *ex parte* and the case is now before the Court upon the application for a temporary injunction.

The defendants have fully answered; all of the ordinances and other facts affecting the question before the Court have been presented; the case has been most ably and elaborately argued; and this hearing, so far as this Court is concerned, is practically a hearing on the merits.

The complainant, by consolidation with other companies and by purchase of other lines, is now the owner of about two hundred and thirty-six (236) miles of street railway track in the City of Cleveland, comprising practically all of the street railway mileage within the City. The East Cleveland Railroad *Railroad* Company is the

constituent company to which, prior to the consolidation, all of the rights involved in this proceeding were granted. This corporation,—that is, The East Cleveland Railroad Company,—was incorporated in the year 1859, and, in the course of the following three years, received grants, by ordinance of the City of Cleveland, for the operation of a line beginning at what was then the easterly city limit at Willson Avenue, thence by way of various streets to and through the Public Square to Water Street. These grants were made to expire September 20, 1879, and under them a street railroad was constructed.

In 1862, the East Cleveland Railroad Company was granted, by the Township Trustees of East Cleveland Township, the right to construct a single street passenger railway track from the Willson Avenue terminus of its line, in the City of Cleveland, eastwardly along Euclid Street (now Euclid Avenue,) a distance of about two miles, to Doan's Corners. There was no time limitation to this grant; and, under it, a street railroad was constructed and put in operation.

Prior to January 14, 1868, the East Cleveland Railroad Company applied to the City Council of the City of Cleveland
103 for leave to construct a street railroad from the intersection of Prospect and Brownell Streets to connect with the main line of its railroad, thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the easterly boundary of said City. The requisite consents of the property owners were filed; bond in the sum of Twenty Thousand Dollars was given; bids were filed, as required by the Statute; and the Council declared, by resolution, that this bid provided for the lowest rates of fare for carrying passengers on the proposed line, made by any company or individual.

Thereupon, on January 14, 1868, the council passed a resolution giving to The East Cleveland Railroad Company permission to lay down a track on the streets named in the application, and to use and occupy the tracks, switches and turnouts during the period of twenty (20) years; and also the right to continue to use and occupy the streets, avenues and public grounds over which its main line was then constructed and operated, westerly from the junction of the Garden Street branch with the main line to its western terminus (that is to say, Water Street,) for the same length of time.

On January 16, 1868, the Railroad Company filed its acceptance of "the grants and permits to construct and operate a street railroad from their main track in Prospect Street, through Brownell to Garden, and through Garden Street to the easterly line of the City, in accordance with their petition and bid, and the ordinance and resolution of the Council."

In March, 1868, the Village of East Cleveland, which bounded the City of Cleveland, on the east at the point where the Garden Street branch, as granted by the ordinance of the City of Cleve-
104 land, ended, granted to The East Cleveland Railroad Company the right to construct a street railroad, "as a branch of

its said railroad," through and along certain streets in the Village, beginning at the termination of its branch road at the easterly line of the City of Cleveland, in Willson Avenue, for a period of twenty (20) years. This ordinance was accepted by the Street Railroad Company, and the Garden Street Branch was built, as contemplated by the two ordinances just referred to, extending from Prospect Street, at Brownell, to the southerly line of Wade Street, at Baden Street. The length of this Garden Street branch, as thus originally established by the ordinances of the City of Cleveland and the Village of East Cleveland, was about two miles.

On March 25, 1873, the City Council passed a resolution granting to The East Cleveland Railroad Company the right to lay a second, or double, track in Garden Street, between Brownell Street and Willson Avenue. There are no words in this ordinance limiting the time during which the right should exist.

On May 23, 1876, a portion of the Village of East Cleveland having been annexed to the City of Cleveland, the Council of the City passed an ordinance entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its road," which ordinance authorized the Railroad Company

"to extend the Garden Street branch of its road to the easterly end thereof, along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street, and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track; and to equip and operate said extension for twenty years in connection with said branch and its main line."

On September 15, 1879, the City Council passed an ordinance granting a renewal, for the period of twenty-five (25) years from and after September 20, 1879, of the right to operate a street railroad in and along Superior Street, Euclid Avenue, Erie Street, Prospect Street, Case Avenue and Euclid Avenue.

On March 20, 1880, the City Council passed an ordinance entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway," which, omitting the formal parts, is, in full, as follows:—

"SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden Street branch of its railway from the present track, at the intersection of Baden Avenue and Quincy Street, in an easterly direction on and along said Quincy Street, to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for the period of twenty-five years from and after the passage of this ordinance; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch, or of its main line, or of said extension by reason of said extension. This grant is made subject to all ordinances of said City Council now in force, or which may hereafter be duly passed regulating street railroads.

SEC. 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication."

This is the ordinance which the City claims is the only ordinance under authority of which the Garden Street branch is now operated, and which expired on the twenty-second day of March of the present year.

On February 9, 1885, the City Council passed an ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway," by which it authorized the Railroad Company

"to extend the Garden Street branch of its railway from the termination of its present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue and equip and operate said extension as a single-track railroad, with all necessary switches * * * in connection with said branch and its main line, and terminating with the grant for the main line," etc.

On June 18, 1887, an ordinance was passed, entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway," by which the Railroad Company was authorized

106 "To extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue, upon Garden Street, in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension, * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."

On March 10, 1890, an ordinance was passed, entitled "An Ordinance granting The East Cleveland R. R. Co. the right to substitute electric motive power for horse power upon its Garden Street branch." Section 1 of this ordinance is as follows:—

"SECTION 1. Be it ordained by the City Council of the City of Cleveland, that The East Cleveland R. R. Co., its successor or assigns, is hereby authorized and granted the right to operate its Garden Street branch by electricity, *i. e.* from the intersection of Prospect and Erie Streets, along Erie Street to Ohio Street, along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street, and along Quincy Street to Woodland Hills Avenue, and authority is hereby granted said Company to erect and maintain on said streets all necessary poles and wires, and the necessary appliances and fixtures for the conducting of electric currents to operate by electric motive power the said Garden Street branch during the term of its present grant for said Garden Street branch. All poles erected under this ordinance to be of iron unless otherwise ordered by the Board of Improvements."

On April 4, 1890, the East Cleveland Railroad Company accepted the above ordinance, and agreed "To abide by the provisions, conditions, limitations and restrictions contained in said ordinance."

On March 30, 1891, an ordinance was passed, authorizing The East Cleveland Railroad Company to lay and operate a second track on Central Avenue, (formerly Garden Street), from the east line of Willson Avenue to the Cleveland & Pittsburgh Railroad tracks; and it was provided, by Section 4 of the ordinance, that "The right herein granted shall be valid until the expiration of the grants for the company's main line."

On April 20, 1891, the Council passed an ordinance granting to The East Cleveland Railroad Company permission to lay an additional track in Quincy Street, from New Street to Woodland Hills Avenue, authorizing the Company to connect the additional
107 track with the tracks then laid upon New Street, and providing that the right therein granted should be valid "until the expiration of the grants for said Company's tracks in Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913."

On March 25, 1893, The Cleveland Electric Railway Company was organized, by the consolidation of The East Cleveland Railroad Company and The Broadway & Newburg Street Railway Company, and subsequently it was further enlarged by consolidation with two other street railroad companies.

On February 19, 1894, an ordinance was passed, granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue. Willson Avenue is a cross-town street, and crosses the various tracks of The Cleveland Electric Railway Company and The Cleveland City Railway Company at many points, including the tracks of the Central Avenue, (formerly Garden Street,) line.

Section 6 of this ordinance provides, as follows:—"A passenger on any car operated on any part of said Willson Avenue, on payment of one fare, either in cash or by ticket, shall be entitled, without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the Company operating the same which crosses the Cuyahoga River, and the passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson Avenue line and to have a continuous ride thereon. The Council shall at all times have the right to prescribe rules and regulations in respect to the transferring of passengers as provided for in this action."

On July 2, 1894, the Council passed an ordinance granting to The Cleveland Electric Railway Company the right to extend and operate its street railroad in Quincy Street, from New Street to Willson Avenue. The distance between these two points is very short,
108 the purpose being to permit a connection between the two tracks. Section 6 of this ordinance provides as follows:—

"This grant shall terminate with the grant for said company's present line in Quincy Street."

On August 8, 1901, the Council passed an ordinance granting to

The Cleveland Electric Railway Company the right to lay a track along the easterly side of the Public Square, and the right to use the tracks of The Cleveland City Railway Company on Superior Street from the westerly side of the Public Square to Erie Street. Section 4 provides:—

"This grant shall expire on March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time," etc.

The purpose of this ordinance was to facilitate the transportation of passengers in the congested part of the City.

The result of the various consolidations of companies and acquisition of properties has been to establish one system throughout the City, over which only one fare is charged for a continuous ride, with certain privileges of transfer.

On January 11, 1904, the City granted to The Forest City Railway Company "the renewal right to maintain and operating the existing street railroads," namely, the Garden Street line.

No question is made, and it is stated by counsel on both sides that no question can be made in this Court, as to the validity of this ordinance, except on the ground that it is in violation of the Constitution of the United States.

109 *Opinion of the Court.*

TAYLER, *J.*:

The complainant bases its claim to relief on several grounds, which are, I think, fairly stated as follows:—

First.

1: That since, prior to the Act of 1878, the Legislature had not delegated to the municipality the right to limit the term of a street railroad franchise, and, as the Legislature has not, since that time, withdrawn from any Street Railroad Company enfranchised prior to 1878 the rights it had thus acquired, the act of the City Council, and of the Council of the Village of East Cleveland, in limiting the term of the complainant's predecessor's rights to twenty years, was invalid, and that the franchise of the Company's "main line" is unlimited.

2: That for the same reason, since the Trustees of East Cleveland Township gave an unlimited and original franchise to The East Cleveland Railroad Company, that franchise still endures.

3: That, since, as claimed, the right to operate the Garden Street (Central Avenue) line—or at least a part of it,—is made to expire with the expiration of the franchise on the "main line," such right is now held in perpetuity, or for an unlimited period.

Second.

That, by reason of the consolidation of the companies and the creation of a "system" over which there is a right to ride for one

fare for a continuous passage, however long, with certain transfer rights, the system must be considered as a unit, with a period of expiration fixed at the date of the last expiring franchise.

110 Third.

That, because of the obligations imposed by the Willson Avenue ordinance, especially by Section 6, requiring transfers at the intersection of the Central Avenue and the Willson Avenue lines, a right arises corresponding to the duty imposed; and, since the Willson Avenue franchise will last until 1914, the duty to transfer at Central Avenue continues until that time, the right to operate the Central Avenue line is extended, by implication, to that date.

Fourth.

1: That the original Garden Street (Central Avenue) grant was for an "extension," and not a new route, and that the granting of the right to operate the several "extensions" thereto "in connection with the main line," or "in connection with the Central Avenue branch," to a time beyond the expiration of the right previously given to "the main line," or to the Central Avenue branch, operated to extend the time of expiration of the franchise of the main line and of the branch. And that this is true, whether by "main line," is meant either the Euclid Avenue line or what is called the "Garden Street branch."

2: That some of the Garden Street ordinances,—some for "extensions," and some for laying additional tracks,—provide for an expiration the same as for the "main line," and that, as to the ordinance for double-tracking on Quincy Street east of Lincoln Avenue, it is explicitly provided that the grant should be valid until "the expiration of the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue, to-wit: July 13, 1913:" and that, by the clear implication of the language, we must conclude that, not only does the right to operate the line east of Lincoln Avenue run until 1913, at least, but that the whole Garden Street line must have the same life.

111 I think I have stated the substance of the claims made by the complainant, and they will be discussed in the order in which they have been given.

First.

As to the Claim of Perpetual or Unlimited Franchise.

Prior to the Act of May 14, 1878, the Legislature had not put any limitation upon the power of a municipality respecting the time during which a right to use the streets for street railroad purposes could exist.

Such a limitation first appears in the Act of May 14, 1878 (75 O. L. 360,) where it is provided that no grant, or renewal of a grant, shall be valid for a greater period than twenty-five years.

It thus appears that, prior to the law of 1878, the Legislature had not undertaken to use the authority which it possessed to put any limit upon the time which might be granted by a municipal corporation to the right of a street railroad company to occupy streets. After that, the Legislature withdraw from the municipality all power which it may have had prior to that time to grant such franchises for a period in excess of twenty-five years.

All of the ordinances passed by the City of Cleveland and by the Village of East Cleveland, as well those passed prior to 1878, as those passed since that time, fixed a time limitation on the grants and renewals given to street railroad companies. The only unlimited grant is that given by the Township of East Cleveland.

The conclusion to which I have come is, that, prior to the Act of 1878, the Council of the City of Cleveland had full power to limit the term of a street railroad's franchise to occupy the streets; and that, even if it did not have such power and such limitation was invalid, nevertheless any rights which may have accrued to
112 the predecessor of the complainant, as well as the right to an unlimited franchise which it had from the Township of East Cleveland, have been, for valid considerations, yielded up to the City.

If we assume that, on March 22, 1880, the complainant, (or its predecessor in title,) had an unlimited grant over some part of its Garden Street line, it is clear that, as a property right, it could contract with the City concerning it; for some accruing advantage of one kind it could contract to give back to the City such portions of the term of the franchise as might be agreed upon.

What was done by the ordinance of March 22, 1880, passed when the Council had the power to grant a franchise for a limited term? It was agreed by that ordinance that the Company might extend its Garden Street line to Lincoln Avenue, and "equip and operate its said extension and all of the Garden Street tracks" for the period of twenty-five years. This ordinance was accepted by the complainant, and constituted a contract. If, at the time of the passage of this ordinance, the complainant had the right to operate any part of the Garden Street line after March 22, 1905, that right was yielded up by force of the contract made through the ordinance of March 22, 1880.

Counsel for the complainant cite, on this point, the case of Citizens Railway Company *v.* City Railway Company, 64 Fed. 647, and the same case, 166 U. S. 557.

In the Circuit Court, Judge Woods, sitting with District Judge Baker, held that the term of the franchise was unlimited, and also that an additional and unexpired term of seven years had been granted. Judge Baker dissented from the holding that the term was unlimited, but agreed that it had seven years more to run; so that both were of opinion that an injunction should be allowed.

The case went to the Supreme Court. There it was held that it was unnecessary to pass on the question of an unlimited grant,
113 because the unexpired term of seven years furnished ground for ample relief. The decree of the lower Court was there-

fore modified, by striking out such parts of it as recognized an unlimited grant. The modified decree was exactly what would have been entered by Judge Baker, and exactly what the Supreme Court would have entered if it had found that there was no unlimited grant.

Surely, if the City had the right to grant the use for an unlimited period it had the right to grant it for a limited period. The greater power would include the less.

But, apart from that, there was no question in the Indianapolis case arising out of the making of a contract with the City after the State had delegated to it the power to grant franchises for a limited term. That is the situation here; and that would control the determination of that question, even if the Supreme Court had sustained the validity of Judge Woods' decree.

Counsel for the complainant, in support of his contention for perpetual franchise, cites the case of State, *ex rel.* Taylor *v.* Columbus Railway Company, 24 O. C. C. 609.

A careful examination of this case shows that so far from sustaining the contention of the complainant, it is authority against it. This case does not hold that, prior to the Act of 1878, the Council of a municipal corporation was without power to impose a limitation of time on a street railroad franchise. It did hold, and does hold, that, until the statute imposed the twenty-five year limitation on the power of the Council, a franchise granted without limitation was perpetual, in so far as the power of the Council existed to terminate it; the Court holding that it could only be dealt with under the reserved power of the Legislature, as granted by the Constitution.

The second proposition of the syllabus is as follows:—

114 "Such consent given prior to said act, (that is, the consent of the City to operate a street railway prior to the Act of May 14, 1878,) without any limitation of time, or to a corporation with succession during the term of its charter, is revocable only by legislative authority."

The third proposition is as follows:—

"A franchise or privilege to construct and operate a street railway, granted and consented to prior to said act without limitation of time, is perpetual but subject to be determined by the General Assembly under Sec. 2, Art. 1, or under Secs. 1 and 2, Art. 13 of the Constitution."

In the opinion, on page 621, it is apparent that counsel for the street railroad company recognized that the council might limit the grant. I quote from the opinion:—

"The contention of counsel for the defendant, (that is, for the street railway company,) is that these statutes expressly confer upon municipalities power to grant the right to use the street, and that the power being unlimited as to the duration of the grant it is in the discretion of the municipality to grant without limitation, and if it does, the grant is irrevocable and perpetual."

And again, on page 637, the Court says:—

"But the right of franchise conferred by the State, (prior to the Act of 1878,) being unlimited as to its duration, and the City, under

its power to agree upon the terms and conditions under which the right might be exercised, not having imposed any such limitation, the right continues subject to be determined only in virtue of the power reserved either by legislation or by the Courts by forfeiture."

It therefore appears to have been recognized and held in this case that if, prior to the Act of 1878, the Council had seen fit to impose a time limitation on a franchise, such limitation would have been valid.

That case also passes upon the question of the effect of succeeding ordinances upon the unlimited grants theretofore given. An examination of these ordinances shows that not one of them undertook to fix a time limitation, or indicated in any way, by contract or by implication, that the railway company was yielding up any unexpired term of any previous franchise.

115 For instance, as stated on page 639, the Court says:—

"It is contended also that in some of the ordinances consenting to double tracks it is provided, 'That nothing in this ordinance shall in any wise work an extension of the charter of said railway company,' and that this is an admission by the company that its franchise is not perpetual; that the several ordinances passed subsequently to 1878 repealed former ordinances and made new agreements, and that by acceptance of the latter ordinances the company gave up all rights under the former ordinances, and that as the latter ordinances were passed subsequently to 1878, the limitation of twenty-five years contained in the act of that year applies, and that contention is made also in respect to ordinances making new or additional agreements, but not expressly repealing former ordinances.

"These contentions have given us much trouble because counsel refer to ordinances we are unable to find, either attached as exhibits to the pleadings or in the agreed statement of facts; however, the alleged admission by the company is immaterial, for it is neither averred nor shown that the action of the city was in any instance procured or influenced by the alleged admission, and as to the other contentions, if they are good, then they concede, that by the new agreements or ordinances consent was given for twenty-five years, and a present right to occupy the streets, and when a right presently to occupy the streets is conceded, we do not consider or determine the moot question of its possible duration."

It is thus apparent that the Court did not have before it any ordinance which explicitly put a limitation on the franchise, and, even if it did, it did not pass upon the question, but held that, as there was still time to run, upon the theory of the plaintiff, no practical question arose as to the right to operate its tracks.

The effect of the passage of an ordinance providing for the substitution of electricity as a motive power in place of horse power is referred to, on page 640, as follows:—

"As to the ordinance authorizing the substitution of electrical power, we may say, in the words of Mr. Justice Brown, in City Ry. Co. *v.* Street Ry. Co., 166 U. S. 557, 569: 'There is nothing in the so-called electrical ordinance which affects this question.'"

Now, an examination of the case referred to, in which Mr. Justice Brown delivered the opinion, discloses that there was nothing touching upon the term during which the right should exist, except the words, "Nothing herein contained shall be construed so as to lengthen the term of the franchise, enlarge, or in any way change or
116 effect, the rights of the Citizens' Street Railway Company," etc.

The manifest purpose of the insertion of that provision was to leave *in statu quo* the pre-existing right, so far as duration of franchise was concerned.

Counsel for the City contend that the action of the Court in the case of State, *ex rel.* Hadden *v.* East Cleveland Street Railroad Company, 6 O. C. C. 318, in which this ordinance of March 22, 1880, was under consideration, estops the complainant from now making any claim of the right to a perpetual franchise.

There is some force in this contention, but it is not convincing. The main question in that case was, whether a renewal could be granted before the expiration of the grant to be renewed. The railway company did not seek the forum, but was compelled, by action of the public authorities, to go into Court and defend itself from a present claim of misuser; and mere reasons presented in argument could not, even if inconsistent with the present claim, amount to estoppel, or make that case *res adjudicata* as to this question.

The conclusion, therefore, to which I have come in respect to this claim of perpetual or unlimited franchise, is that, prior to the Act of 1878, the Council had the right to limit the term of a franchise; and that, as to any franchise granted for an unlimited period, the rights of the complainant have been wiped out by its subsequent contracts entered into with the City.

Second.

As to the Effect of the Consolidation and the Creation of a System.

I am not at all impressed with the force of this claim. Of course, there are many and obvious advantages in the development of
117 a system. Unity of management and of fares, as well as unity of responsibility, is a thing much to be desired; and the proposition that, on that account, renewals of franchises might come by implication, would be more plausible if it were not for the consequences which would manifestly follow. It is true that with a system, insofar as it is essential that all of its constituent parts should be unified, the right to operate it and all of its parts ought to be co-determinate; but two observations conclusively answer the contention of the complainant; first, that if there is any control over the life of the system and of its parts, it is the life of the system which must control the life of the parts, not the part the system; second, it is far from the truth that, physically or practically, or legally, any one part of the system is essential to the operation and life of the system.

Third.

The Willson Avenue Ordinance.

The claim that the imposition of certain contract duties by Section 6 of the Willson Avenue ordinance creates, by necessary implication, a franchise right enduring as long as the Willson Avenue franchise, is made.

But an examination of that ordinance does not support the contention. It is true that, under the provisions of Section 6, it is made the duty of the complainant to transfer passengers to its Garden Street line. But the Council could not have intended, by so requiring, that such transfers be made by the complainant when the complainant had no Garden Street line; and, if it had so intended, and had so declared, it would have been invalid. To assume that the City could terminate the right to operate the Garden Street line, and make it impossible for the complainant to transfer passengers at the intersection, and then hold the complainant responsible for not transferring them, is to assume an impossibility.

118

Fourth.

We now come to the last, and most important, of the considerations urged by counsel for the complainant, namely, that the effect of the several ordinances relating to the Garden Street (Central Avenue) line is to extend the franchise along that line, for its entire distance, until July 13, 1913.

This involves an inquiry into the nature of these ordinances and the history of the Garden Street line, as well as a discussion of the power of municipal corporations, and the method by which, if at all, a franchise can arise by implication.

The public cannot be held to have parted with its fundamental rights, except by clear and explicit language, or by implication equally clear.

This rule of law is thoroughly established, and must not be relaxed. It is essential to the preservation of the rights of the people for whose benefit legislatures and municipal councils are created, and public service corporations permitted to exist.

Let us examine into the grounds of these salutary definitions and declarations.

In the State Legislature, under the sanction given and limits set by the Constitution, is reposed the sovereign power of the State. Some of that power it has delegated to the municipal council. A fragment of its authority, (which it may at any moment recall,) it has turned over to the Council of the City of Cleveland. Among other things it has so turned over to the City is the power of limiting, to twenty-five years, the time during which a street railway company, under its perpetual charter to be a corporation, may operate its cars on the streets of the city. I say perpetual charter, because, while the State could repeal or annul the charter, it does not in fact do so except for misuser or nonuser.

119 We have, therefore, the patent fact that a corporation may have perpetual life given it by the State, but may be lawfully denied, by the municipal corporation, the right to have anything more than a nominal life, unless, in some lawful manner, it succeeds to rights which the municipal corporation has granted.

Now, this delegated sovereignty, reposed in the municipality by the State, is to be exercised by the agent with no less care than if exercised by the sovereign itself. It is true, as urged by counsel, that the City Council has plenary power, subject only to certain well defined limitations; but it is not to be therefore said that, having plenary power, that power may be exercised in any other than the method provided by law, or that it may be assumed to have exercised it when the fact does not clearly appear. The Council is not only merely representative of the people who elect it, but it is also the representative of the sovereign. Restrictions are vain if the checks put upon the methods of municipal legislation are not to be respected when they deal with fundamental rights.

The rule that obligations arise, or rights are granted, by mere implication, depends upon the nature of the parties, and the character of the obligations and rights. It is a very easy thing for a man, competent to contract, to have his rights determined by the just implications from his acts. He may find himself parting possession with his property even when he did not intend to do so; but this is all but impossible with a municipal corporation. Indeed, a municipal corporation, through its council or officers, may sometimes make strenuous effort to part with its property or with public rights, and fail in the effort. Instances of this kind could be indefinitely multiplied.

120 But to say that a municipal corporation, the delegate of sovereignty, has parted with one of the powers of sovereignty by implication, is to assume that which, while not impossible, can only be supported by the strongest proof, and by an implication so cogent as to be quite as impressive and conclusive as if the grant had been made in express terms.

The rule of grant by implication is correctly stated in Booth on Street Railways, Sec. 43, as follows:—

"As repeals by implication are not favored, and the rule of strict construction against the grantee is strictly applied to charters of private corporations, a corporation will not be permitted to enlarge a franchise beyond the expiration of its original charter unless that intention has been clearly expressed by the granting power. Amendatory and supplemental acts or ordinances will not have that effect unless the intention to renew the franchise be expressed in apt terms, and any ambiguity in the language used will be resolved in favor of the State."

Judge Cooley, in his work on Constitutional Limitations, at page 394, quotes with approval the language of the Supreme Court of Pennsylvania, in the case of Railroad Company *v.* Canal Commissioners, 21 Pa. St. 22:—

"When a State means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the

power that belongs to her, it is so easy to say so, that we will never believe it to be meant when it is not said. In the construction of a charter, to be in doubt is to be resolved; and every resolution which springs from doubt is against the corporation."

The Supreme Court of the United States has expressed the same thing in no less emphatic terms, in Fertilizing Company *v.* Hyde Park, 97 U. S. 66:—

"Every reasonable doubt is to be resolved adversely to the corporation. Nothing is to be taken as conceded but what is given in unmistakable terms or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this Court."

The general doctrine is laid down by Chief Justice Taney, in Charles River Bridge *v.* Warren Bridge Company, 11 Pet.
121 420, in which the proposition is forcibly stated that, as against the sovereign, no grant can arise by implication; but that the full vigor and powers of the sovereign will be presumed to exist in every case where a claim is made in derogation of them, unless by clear, positive and explicit language a grant has been made.

An interesting case is that of New Orleans & Carrollton Railroad Company *v.* City of New Orleans, 34 La. Ann. 429. In that case a company was chartered by the Legislature of Louisiana in 1833, the duration of its franchise being fifty years. The company was to build and operate a railroad from New Orleans to Carrollton, and all of its property was, for a definite period, exempted from taxation. In 1835, another act was passed by the Legislature, providing for the enlargement and mode of subscription and payment of shares of the capital stock of the original company, conferring upon it certain banking privileges, and authorizing it to construct *a continuation* of the railroad authorized under the previous law, from Carrollton to the Town of Bayou Sara. It was provided in express terms that this second grant, and all privileges conferred by it, were
122 to remain in force for seventy-five years from the date of the passage of the act, and further provided that all of the property of the company in the nature of railroad and equipment should, at the end of said period of seventy-five years, revert to the State. Upon the basis of these two, and certain other, acts of the Legislature of Louisiana pertaining to said company and affecting various of its rights, it was contended that the limitation of time contained in the second grant extended the life of the first grant, and that the exemption from taxation provided in the first grant was annulled by the second, but that all of the property covered by the first grant, with that covered by the second, reverted to the State at the end of the period of seventy-five years. The company was thus contending for a sacrifice or rights very important to it on the one hand, while it contended for an extension of its life twenty-five years on the other.

The Court says:—

"A fact which impresses one as remarkable at the outset is that the Carrollton Railroad Company, which has initiated this litigation,

should be contending with such zeal to enlarge the construction of the 22nd section of the act of 1835, which purports to do nothing except to impose upon the company a burden and to exact a penalty as a compensation for privileges, part of which it never exercised, none of which ever inured to its advantage, and all of which have long since been abandoned. This anomaly is explained when we see that the company deduces from this burden, implied privileges in its own favor, largely exceeding in value the burden itself, and thus seeks to convert the penalty into a reward."

The Court says, on page 440, referring to a phrase in the act of 1835, which provided that the railroad to be constructed under the second grant was to "constitute a continuation" of the road constructed under the first grant, from which the results above outlined were attempted to be deduced:—

"Surely so slender a thread was never required to support so ponderous a weight. * * * They extend, by implication, the existence of the corporation twenty-five years beyond the term to which its duration was expressly limited by its charter."

123 As to the implication of renewal, or expansion of duration see the case of City of Cincinnati *v.* Cincinnati Electric Railway Company, Superior Court of Cincinnati, 30 B. 321, affirmed by the Supreme Court without report.

Among other things held in that case was that

"the fact that, in 1885 and 1888, at which times the grant for Route No. 8 had expired, the Board of Public Works granted to the defendant company permission to substitute electricity as a motive power, in place of animals, did not impliedly renew the grant of that route."

Although, in that case, it was held that the Board of Public Works had no right alone to grant a renewal, the Court says that the language of the grants gives no warrant whatever to any claim that even the Board of Public Works, or the Board of Public Affairs, intended to renew any grant then in existence, or to vitalize any grants whose existence was doubtful. And the Court goes on to say that the expenditures made by the railway company, in substituting electricity as a motive power, do not operate to bring about a renewal by estoppel.

And this is true, not only for the reasons already asserted, but because of the nature of the situation which exists when such legislation is under consideration. The municipal legislative body does not always consider the possible legal deductions which may be made from its language, and it could not do so; when the matter is susceptible of such easy expression in the English language, it might well suppose that if, by an ordinance, it was intended to fix a period for a franchise, it could be done in unmistakable terms. There is no need of concealment in such cases, and no need for implication.

If it be true that to grant the right to build an extension and permit its operation as such in connection with the system of which it forms a part, for a period beyond the duration of the system's franchise, is to extend to that date the franchise of the system, then

we must conclude that the Council may give away the pub-
124 lic's property and the rights of the community, without knowing that it is doing so, and while striving not to do so.

It is most ingeniously and plausibly argued that, to give the right to operate, in connection with the main stem, the extension of an existing line, to a time beyond the time allotted to the existing main stem, is, by implication, to extend the period of right to operate the main stem, because, if it were otherwise, it would lead to an absurdity, and leave the fragmental extension alone and incapable of operation when the franchise of the main stem expired.

Yet, apart from the fundamental objection which I shall hereafter discuss, a little reflection suggests many answers to the claim. The extension may or may not be incapable of independent operation. Is the determination of the right to depend upon the particular conditions of independence, or of isolation, in each case? The price is too high, and the implication too severe and far-reaching, if, as claimed by counsel, as slight prolongation of a line, made under the statute allowing extensions, shall suffice to extend the franchise of two hundred and thirty-six miles of line if, perchance, a careless, or generous, or complacent Council, dealing with the triviality of a few hundred feet of extension, should give the right to, operate it, in connection with the main line, for a period beyond the date of expiration of the main line's franchise. Certainly, no obligation is incurred to so operate in connection with the main line after the company's franchise to the main line has expired.

No doubt the vigilant representatives of the railway company will always endeavor to procure the longest possible term for the most trivial extension. The Council may think the right of such slight importance as to grant it without thought of any additional and important rights arising by implication. When the right is
125 possessed, if it can be possessed, and the corporation is in possession even of only a few hundred yards under such a franchise, it has a position of some importance, and sometimes of controlling importance.

An examination and comparison of the several ordinances relating to this subject leaves upon the mind the indelible conclusion that, after the ordinance of March 22, 1880, all of the extensions of the Garden Street line were intended to expire with the Garden Street main line franchise, viz, March 22, 1905.

I am of opinion that it was the purpose of the Council, all the time, to make the life of the right to operate the Garden Street line all the same throughout its length, and over all the extensions and additional tracks.

This view is supported by the inherent reasonableness of the purpose, and by the language, of most of the extension ordinances. It is, to some extent, discredited by the language of the ordinance dated April 20, 1891, in which it is provided that the right to operate the extension therein referred to shall terminate with "the expiration of the grants for said company's tracks on said Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913." But if this shows that the Council assumed and believed that the franchise east of Lincoln

Avenue did not terminate with the termination of the main Garden Street ordinance, it shows also, beyond the possibility of successful answer, that the right to operate the Garden Street main line did not automatically expand and lengthen every time an extension ordinance was passed, with an extended date of expiration.

But, after all, the conclusively satisfactory answer is, that it is intolerable to think that, instead of using direct, explicit and easily framed language to grant a great right which only the sovereign can grant, it may be conveyed by an implication to be raised by a process of reasoning which the lay mind has difficulty in comprehending, and which it could hardly discern at all if not pointed out; and that this implication may be so derived from apparently innocuous and insignificant words lost in the mazes of an ordinance of relatively small consequence. Fundamental powers of the sovereign to be used by a delegated body, naturally untrained in the law's learning, and rigidly restricted in its use, are not to be so exercised.

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Nor are we denied the possession of other cogent reasons reaching the same conclusion. In view of the contention here made by the complainant, it is most significant and astonishing that in no single instance of an extension ordinance does the title of the ordinance state that any such object was in view, or that any extension of time for expiration of either the main line or the Garden Street branch was involved in the permission thereby given for the construction of an extension. But the law explicitly requires that the "subject" of an ordinance "shall be clearly expressed in its title." What could more surely do violence to the letter, and spirit, and purpose of that legal requirement, than to say that an ordinance entitled an ordinance to permit some petty and relatively unimportant extension should be found to contain within its sophistical implications a grant renewing, for a term of years, an important and far-reaching franchise? Can such an implication, from such an ordinance, so entitled, be justified either on the ground of reason or of propriety?

Respecting the ordinance of April 20, 1891, granting to The East Cleveland Railroad Company permission to lay an additional, or second, track in Quincy Street, from New Street to Woodland Hills Avenue, and wherein it is provided that the right therein granted shall be "valid until the expiration of the grant for said company's tracks in Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913," the conclusive answer is that the grant for the company's tracks in Quincy Street east of Lincoln Avenue did not, and would not, expire July 13, 1913. The ordinance did not state the fact. It is true that the original right in Quincy Street east of Lincoln Avenue was, by the terms of the ordinance granting it, to expire with the main line franchise. If by "main line" was meant the Euclid Avenue line, then it would expire in 1904. Subsequently, that main line franchise was extended to July 13, 1913, and doubtless the person who drafted this ordinance assumed that, as the main line franchise had been extended to July, 1913, the effect of that extension was to extend the time of the rights in Quincy Street east of Lincoln Avenue to that date. But the fatal defect in

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that process of reasoning, and the fatal objection to the date inserted in the ordinance of April 20, 1891, is that, after the passage of the ordinance for the Quincy Street extension east of Lincoln Avenue, and before the passage of the ordinance extending the main line to 1913, to-wit, on March 10, 1890, the Council passed an ordinance authorizing The East Cleveland Railroad Company to substitute electrical motive power for horse power over its Garden Street line to Woodland Hills Avenue, and provided that the right to operate the Garden Street branch should continue during the term of the company's then present grant for the operation of the tracks upon the Garden Street branch.

Now, the Garden Street franchise, at the time of the passage of the ordinance of March 10, 1890, was to expire on the twenty-second day of March, 1905, and the period of expiration of the right to operate an extension east of Lincoln Avenue on Quincy Street, if it could be different from the life of the main stem, if it could be made to co-exist with the franchise on the Euclid Avenue line, was wholly wiped out by this new ordinance authorizing the use
128 of electricity, and changed the termination of its franchise to accord with the franchise for the Garden Street line, viz. March 22, 1905.

It therefore follows, from the language of the several ordinances, properly interpreted, that the franchise for the entire Garden Street line expired March 22, 1905.

While the foregoing considerations lead to the conclusion that the relief sought by the complainant must be denied, still I am constrained to rest my determination of this question on a much broader and more satisfactory ground.

I have reached the conviction that it is beyond the power of the council to endow an "extension" with a duration of life extending beyond the life of the line which is extended. This, it seems to me, must be true, considering the nature of an extension, as well as the statutory provisions relating thereto.

Before we can arrive at a definition of an extension, as the term is used in Ohio, it is necessary to examine the statutory provisions which throw light upon the subject.

Under the law of Ohio, three different things can be done respecting the construction and operation of a street car line; first, the establishment of a route, which must be done in a certain formal way, in which there is an opportunity for competitive bidding; second, the renewal of a franchise, but neither the grant of the right to construct a railroad, nor the renewal of that grant, is valid for more than twenty-five years; and the third thing that may be acquired is the right to extend the track of a street railroad.

The Garden Street line, which, with its extensions, is the subject of this controversy, as originally established, was not an extension of The East Cleveland Railroad Company's line, but was a branch, possessing all the characteristics of an original route, and was established in strict conformity with the requirements of
129 Section- 2501 and 2502. The fact is, that, when authority was given to construct the Garden Street branch, no authority

existed for the extension of the track of a street railroad, and it was necessary, in order to obtain the right to proceed under the authority of what are now Sections 2501 and 2502.

Section 2501 provides as follows:—

"Sec. 2501. No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered to the public interest."

Section 2502 provides as follows:—

"Nothing mentioned in section 2501 of the Revised Statutes of Ohio shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council; and no ordinance for the purpose specified in section 2501 of the Revised Statutes of Ohio shall be passed until public notice of the application therefor has been given by the Clerk of the corporation once a week, for the period of at least three consecutive weeks in one or more of the daily papers, if there be such, and if not, then in one or more weekly papers published in the corporation; and no such grant as mentioned in section 2501 of the Revised Statutes of Ohio shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant nor renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of grant."

Neither Section 2501 nor Section 2502 refers to, or has anything to do with, extensions; and it follows that, if an extension has any different life from that with which the thing extended is
130 endowed, it is because the State has not limited the power of the municipal council in respect to the right to limit the life of such extension. The State has delegated this authority to limit the life of an original franchise, or a renewal, to twenty-five years, and does not in terms put any limitation on the life of any other grant relating to street railroads.

If an extension may have any other life than the life of the thing to which it forms an extension, it may be given an unlimited

term of life by the Council. The general law gives authority to the Council to consent to the use of the City's streets by street railroads, and, as we have seen, it was not until 1878 that a proviso was added, to the effect that no grant or renewal, (that is to say, no grant or renewal under Sections 2501 and 2502,) should be valid for more than twenty-five years. This proviso is a limitation upon the plenary power theretofore given by the State to the Council; and no more is to be subtracted, in consequence of that proviso, from that plenary power thus delegated, than its express terms permit. There is no specific limitation, nor can such be derived by implication, upon the power of the Council to give as large a consent for as full a time to an extension as, prior to 1878, it could give to an original grant or renewal, unless the position is sound that an extension, in the very nature of things being a part of the thing extended, must have the same life as, and no more than, the line, or branch, or route, of which it is an extension.

The grants and renewals referred to in the last clause of Section 2502 must mean the original grant or its renewal, and cannot apply to an extension, because the first requirement of Section 2502 is that nothing mentioned in Section 2501,—that is to say, no work performed in the construction of a street railroad,—shall be done until
suitable advertisement has been made, and the right given to
131 the corporation or individuals that will carry passengers at the lowest rate of fare.

Section 2505, which, so far as this question is concerned, is in the same form now as it always has been, provides as follows:—

"Sec. 2505. The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, *any street railroad, to extend their track*, subject to the provisions of sections 3437, 3438, 3439, 3440, 3441, 3442 and 3443, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation."

In its original form, this section was passed May 7, 1869, and was supplementary to an act passed March 27, 1866; and the provisions to which it was then subject were provisions of the act of March 27, 1866, determining how the street railroad company might proceed when it was unable to obtain the consent of a majority of the property owners along the street, and gave them the right of appropriation.

It will be noted that this right of extension is granted under certain conditions named in the section, and also subject to the provisions of sections 3437 to 3443, inclusive. These sections fix the terms and conditions upon which the extension may be made, and are not, therefore, the terms and conditions described in Section 2501, relating to the establishment of a route or the renewal of a grant.

An extension of the track of a street railroad may be permitted

to the corporation owning the line sought to be extended, without any competitive bidding, on such terms and conditions as the council and the company may agree upon, and, of course, subject to the consent of a majority, by feet front, of the property owners along the line of the extension. The right of extension is, as it must be, based upon the fact that there is already a line in existence,
132 and that the permission to extend is a mere development of the right already granted.

The language of Section 3439 is significant in this respect, namely: that "the provisions of sections 2501 and of 2503 to 2505, inclusive, so far as they are applicable, shall be observed in all respects, whether the railway proposed is an extension of an old, or the granting of a new, route."

Now, the extension of an old route is not the granting of a new route, as the juxtaposition of the terms contained in Section 3439 manifestly discloses. The extension of an old route, as the term is used in Section 3439, means, if we can understand the ordinary meaning of language, that it is a mere physical addition to the route or right already established, and that it becomes incorporated in, and actually a physical and legal part of, that which was originally established. Otherwise, we would have the spectacle of a new route, or new line, established without the usual formality of a petition, with an opportunity to all persons to bid for the same.

If this reasoning is sound, it is quite apparent that an extension of an existing route can have no other term of life than the term of life of the line to which it is an extension. If it were not so, we would not only be confronted with the condition where two parts of one line have a different duration of life, but we would have a vested right in the corporation which owned the route to occupy a part of it far beyond the period of life of the original stem, and practically nullify the statutory requirement when new routes are established.

But more than that would be true. Under the law of Ohio, an extension may be granted for an unlimited term, or it must have its life determined by the life of the thing extended. Nowhere can authority be found for limiting the life of an extension, if an
133 extension is considered as a thing to which the council can give any period of time it pleases up to twenty-five years.

Strictly speaking, the granting by the Council of the right to extend a street railway line is not the giving of a franchise, but the expansion or enlargement of a franchise already given. It is, at most, nothing more than a subsidiary franchise. It is not original. It can have no life and no power, which do not inhere in, and belong to, the original line of which it is an extension.

As stated in the text of Booth on Street Railways, section 63: "The extension is a necessary incident to the principal subject of a previous valid grant." Now, if an extension is a necessary incident to the principal subject of a previous valid grant, how can anything more occur than that the extension is absorbed by the previous valid grant, and has precisely the same life which that grant possessed?

The same principle, of necessity, applies to, and indeed is most

aptly illustrated by, the ordinances granting the right to lay an additional track over a part of an established route, or its extension. How can the period during which the right exists to operate the additional track extend beyond the life of the line to which the track is added? The second track is neither an extension nor a renewal. It is not the establishment of an original route. It is not governed by the requirements of Section 2502. There is no competitive bidding. It is a mere incident of the contract between the city and the street railroad company. It is, like the extension, a mere integral part, but only a part, of the main body of the property. The life of the right to operate it must, in the very nature of things, terminate with the life of the main body of which it is a part. The effort of the Council to give it life beyond the life of the main stem is not effective, either to give the right to operate the additional track beyond the period fixed by the ordinances for the main stem
134 franchise, or, by reason of the grant of the additional track, to extend the life of the line of which it forms a part.

The Council had no power, having established a route under certain conditions which the law requires, and having the right to renew it as a renewal, to undertake, by the mere giving of the right to double-track, to give the right to operate the second track for a period beyond the term of the franchise of the line which is double-tracked.

One might as well say that the human foot could survive after the vital organs have ceased to exist; that where there is one life-giving center, the things which grow out of it, and are subsidiary to it, may live after the life-giving center has ceased to have life. The whole theory of the claim that an extension can live longer than the thing extended is at war with reason, and with the nature of things.

It is true that, in this respect, the extension statute has not been considered by the Courts. The word extension has not been defined. It has not been judicially declared that an extension cannot live longer than the thing extended. Probably this is so because no contrary contention has ever before been made. The only reference which has come to the attention of the Court at all touching the subject appears in the opinion in the case of Cincinnati *v.* Cincinnati Street Railway Company, in the Superior Court of Cincinnati, 31 B. 308. In this case the Court says, after holding that it was competent for the Council to impose terms and conditions upon which an extension could be made,

"Among the conditions which I have excepted from the application of this principle, (that is, among the conditions which may not be changed by councilmanic action, or imposed upon a company at the time of making an extension,) are those which provide that no increased rate of fare shall be charged beyond that authorized to be charged on said route No. 13, and that the term of the extension shall terminate with the term of the original grant. These are really not conditions imposed by the Board of Administration, but by the law itself; and may therefore be dismissed from the discussion."

135 The opinion in this case very elaborately discusses the subject of extensions. If the claim had been made, or if the thought had occurred, that an extension might have a life enduring beyond that of the line extended, it would undoubtedly have been raised in this case, and would have been discussed by the Court; but the Court, in view of the subject, which had evidently been elaborately argued and fully considered, makes the remark in passing, which evidences a conviction on its part, that the law itself imposes the condition that the term of the extension shall terminate with the term of the original grant.

These conclusions may be summarized as follows:

1: Prior to the Act of May 14, 1878, it was competent for the Council to make grants for street railway purposes, either with or without limitation as to time.

2: Whatever be the duration of a grant, whether limited or unlimited, it may be changed by contract between the City and the grantee of the right, subject only to the proviso now in force, that no grant shall be valid for more than twenty-five years.

3: Neither the consolidation of the street railway lines into one company and one system, nor the transfer obligations imposed by the Willson Avenue ordinance, operates to prolong the life of any prior grant.

4: An extension of the life of a grant by implication is not favored, and will not be declared, except when clearly manifest and obviously necessary; and this rule is invoked with especial propriety where the implication is sought to be made in ordinances, not one of which, in its title, gives the slightest intimation of a purpose to deal with the subject of the life of a grant.

5: Permission to extend tracks and operate them "in connection with the main line" for a period which endures longer than the right to operate the main line will not have the effect of ex-
136 tending the life of the main line grant.

6: The ordinance of March 10, 1890, authorizing the substitution of electricity for horse power on the Garden Street (Central Avenue) branch fixed a uniform period for the termination of the franchise of the Garden Street line over its entire length to Woodland Hills Avenue, and abrogated, by consent of both parties, any prior contract for a different date, if any such there was.

7: An "extension" is not a new route; it has no independent life; it depends upon, and is a part of, the line to which it is added; and, as it could have had no legal existence without the original line, so it can have no tenure of life beyond that of the original line.

8: The Garden Street Branch was established as a "route," and is an original line; the franchise to operate it, including all of its extensions and additional tracks, expired March 22, 1905.

The temporary injunction asked for will, therefore, be denied. A decree may be taken in accordance with this opinion, and it ought to be framed as if upon final hearing.

ROBERT W. TAYLER, *Judge.*

April 24, 1905.

(Endorsements on Opinion of the Court:) 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Opinion of the court. Filed Apr. 24, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

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(Notice of Motion.)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. # 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Take notice that on Saturday, the 27th day of May, in the year 1905, the defendants will move said Court to enter a decree in the above entitled cause in accordance with its opinion filed herein on the 24th day of April, 1905, a copy of which decree is hereto annexed.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

Service of the foregoing notice is hereby accepted this — day of May, in the year 1905.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY, *Its Attorneys*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

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No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Order.

This cause came on to be heard on the plaintiff's Bill of Complaint and the amendment thereto heretofore filed, the separate answers of the defendants The City of Cleveland and The Forest City Railway

Company, and the separate amendments this day filed to each of said answers, the motion of the complainant for an injunction in accordance with the prayer of its bill and the amendment thereto, and on the resolutions and ordinances of the Council of the City of Cleveland and of the Trustees of the Township of East Cleveland and of the Council of the Village of East Cleveland filed in this cause and read at the hearing and was argued by Council.

Whereupon, the Court being fully advised in the premises, is of opinion and doth find that the rights and franchises of the complainant under and by virtue of the contracts pleaded as set forth in its bill of complaint and the amendment thereto expire with the 22nd day of March, in the year 1905, on the streets and avenues of the City of Cleveland commencing at the intersection of Prospect and Erie Streets in said City; thence southerly on, over and along Erie Street to Central Avenue; thence easterly, on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly on, over and along Quincy street to Woodland Hills Avenue, and that the ordinance of the City of Cleveland known as Ordinance # 42240 passed by the Common Council of said City on the 11th day of January, 1904, approved on the 20th day of January,
139 1904, and set forth in paragraph 28 of the complainant's Bill, does not impair any existing contract right between the said complainant and the City of Cleveland.

It is therefore adjudged, ordered and decreed by the Court that the motion for an injunction be denied, and that the complainant's bill be and the same is hereby dismissed, and that the defendants recover of and from the complainant their costs in this behalf expended, the same to be taxed by the Clerk of this Court.

(Endorsements on Notice of Motion:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Notice. Filed May 25, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

140 (*Amendment to Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Answer of the City of Cleveland.

Now comes the defendant, the City of Cleveland, and by leave of Court files this amendment to its original answer herein.

I.

This defendant denies the allegations of fact and of law set forth in the first paragraph of the amendment heretofore filed to the complainant's bill of complaint.

II.

This defendant denies that the lines of street railroad owned and operated by the complainant and set forth and described in paragraph II of the amendment to its bill of complaint were acquired by it by grant from the State of Ohio with the consent of this defendant. It also denies that prior to May 14, 1878, the East Cleveland Railroad Company received from the State of Ohio the right and privilege of maintaining and operating street railroads in the City of Cleveland and in the Village of East Cleveland by and with the consent of this defendant, and said Village, upon the streets named in said paragraph of said amendment.

III.

This defendant denies each and every allegation of the
141 third paragraph of the amendment to the complainant's bill.

IV.

This defendant further answering says that theretofore, to-wit on the 15th day of September, 1879, the Council of this defendant passed an ordinance entitled "An ordinance granting a renewal of the franchise to the East Cleveland Railroad Company to re-construct, maintain and operate its street railroad in and through certain streets of the City of Cleveland" and that by Section 1 of said ordinance the right was granted to the East Cleveland Railroad Company, its successors and assigns, to re-construct, maintain and operate its double tracks street railroad, with the necessary switches, turn-tables and turn-outs as previously constructed, and as then maintained and operated in the City of Cleveland, commencing on Superior Street at the intersection of Water Street; thence through Superior Street to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue; and that the right thereby granted and conferred was upon new and different conditions in many respects from the rights existing in the previous contracts and ordinances made between this defendant and the East Cleveland Railroad Company; that by Section 12 of said ordinance it was provided that the authority and privileges therein contained were to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879, the said Company, its successors and assigns performing the several conditions by that ordinance required, and that the said East Cleveland Railroad Company accepted the terms

and conditions of said ordinance and reconstructed and continued to maintain and operate its double track street railroad on
142 the streets therein described according to the terms and conditions of said ordinance; by reason whereof the said ordinance became a binding contract, and the provision as to the expiration of the rights and privileges of said Company contained in said ordinance superseded any and all previous rights between said parties for the continued operation of said street railroad.

V.

And this defendant further says that on the 4th day of April, 1883, the Council of this defendant passed another ordinance entitled "An ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street upon the terms and conditions expressed in said ordinance; that among the rights and conditions expressed therein was that the right of said Company "to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue;" that said ordinance and the conditions thereof were accepted by the said Company, and thereby became a binding contract between said Company and this defendant, and substituted the condition as to the expiration of the rights and privileges of said Company east of Willson Avenue as set forth therein for all previous existing rights between said parties.

VI.

This defendant further says that on the 22nd day of March, 1880, the Counsel of this defendant passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway," and that by said
143 ordinance the said Company was authorized and empowered to extend the Garden Street branch of its railway from the existing track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and along said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate said extension and its Garden Street branch for a period of twenty-five years from and after the passage of said ordinance; that said ordinance was accepted by the said Company, the extension thereby authorized was made, and the street railroad was operated and maintained in accordance with the terms and conditions of said ordinance, by means whereof the said ordinance became a new contract between the said East Cleveland Railroad Company and this defendant, and substitutes the provision therein contained as to the date of the expiration of the rights and privileges of the East Cleveland Railroad Company for its Garden Street branch for the terms and conditions as to the expiration of any previously existing ordinance or contract between said parties, whether obtained from the Council of this

defendant, the Trustees of East Cleveland Township, or the Council of the Village of East Cleveland, or from the State of Ohio previous to the 14th day of May, 1878, or at any other time.

VII.

And this defendant further says that on the 10th day of March, 1890, the council of this defendant passed another ordinance entitled "An ordinance granting The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;" that by said ordinance, the right was granted said Company to operate its Garden Street branch by electricity, "*i. e.* from the intersection of Prospect and Erie Streets along Erie Street to Ohio Street; along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Quincy
144 Street, and along Quincy Street to Woodland Hills Avenue;" and that the authority thereby granted was to continue during the term of the present grant of said Company for its Garden Street branch, its present grant being the ordinance cited in the last paragraph; that this ordinance was accepted by said Company and electric motive power was substituted on said street railroad for animal power, and thereby said ordinance became and is a contract between said parties made upon a good and sufficient consideration and binding between them as to the date of expiration, and the date of expiration fixed therein being substituted for any date for any previous contracts or ordinances between said parties, no matter from what source the same was obtained nor by whom made.

This defendant says that the streets and avenues covered by the two ordinances last pleaded are those mentioned and described in the complainant's original Bill, and its contract rights upon which it is asserted are impaired by Ordinance No. 42240 set forth in Paragraph 18 of the complainant's original Bill.

This defendant, therefore, files this amendment to its original answer to meet the allegations of the amendment heretofore filed by the complainant to its Bill of Complaint, and it prays as in its original answer it has already prayed, to be hence dismissed with its reasonable costs in this behalf expended.

NEWTON D. BAKER,
Attorneys for Defendant.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker being first duly sworn, says that he is the City Solicitor of the City of Cleveland, a municipal corporation of
145 the State of Ohio, and defendant in the foregoing action; that the allegations contained in the foregoing amendment to its answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence this 25 day of May, A. D. 1905.

WILLIAM A. CAREY,
[SEAL.] *Notary Public.*

Endorsements on Amendment to Answer of the City of Cleveland: In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity No 6851. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants Amendment to answer of the City of Cleveland Filed May 27, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Newton D. Baker, Attorneys for City of Cleveland.

146 (*Amendment to Answer of The Forest City Railway Co.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Answer.

Now comes the defendant, The Forest City Railway Company, and by leave of Court files this its amendment to its original answer herein.

1. This defendant denies the allegations of fact and of law set forth in the first paragraph of the amendment heretofore filed to the complainant's bill of complaint.

2. This defendant denies that the lines of street railroad owned and operated by the complainant and set forth and described in paragraph "2" of the amendment to its bill of complaint were acquired by it by grant from the State of Ohio with the consent of the defendant; it also denies that prior to May 14, 1878, The East Cleveland Railroad Company received from the State of Ohio the right and privilege of maintaining and operating street railroads in the City of Cleveland and in the Village of East Cleveland by and with the consent of said City and Village upon the streets named in said paragraph of said amendment.

3. This defendant denies each and every allegation of the third paragraph of the amendment to the complainant's bill.

4. And this defendant further answering says that heretofore, to-wit: on the 15th day of September, 1879, the Common Council of the City of Cleveland passed an ordinance entitled "An
147 ordinance granting a renewal of a franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland," and that by Section I of said ordinance, the right was granted to The East Cleveland Railroad Company, its successors and assigns, to reconstruct, maintain and operate its double track

street railroad with the necessary switches, turn tables and turnouts as previously constructed and as then being maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior Street to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue, thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue; and that the right thereby granted and conferred was upon new and different conditions in many respects from those existing in the previous contracts and ordinances made between the City of Cleveland and The East Cleveland Railroad Company; that by Section 12 of said ordinance, it was provided that the authority and privileges therein contained were to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879, the said Company, its successors and assigns performing the several conditions by this ordinance required; and that the said East Cleveland Railroad Company accepted the terms and conditions of said ordinance and reconstructed and continued to maintain and operate its double track street railroad on the streets therein described according to the terms and conditions of said ordinance; by reason whereof the said ordinance became a binding contract, and the pro-
vision as to the expiration of the rights and privileges of
148 said company contained in said ordinance superceded any and all previous rights between said parties for the continued operation of said street railroad.

5. And this defendant further says that on the 4th day of April, 1883, the Council of the City of Cleveland passed another ordinance entitled "An ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street;" that by Section I of said ordinance the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street upon the terms and conditions expressed in said ordinance; that among the rights and conditions expressed therein was that the right of said Company "to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue;" that said ordinance and the conditions thereof were accepted by the said Company, and thereby became a binding contract between the parties and substituted the condition as to the expiration of the rights and privileges of said Company east of Willson Avenue as set forth therein for all previous existing rights between said parties.

6. This defendant further says that on the 22nd day of March, 1880, the Council of the City of Cleveland, passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Com-

pany to extend the Garden street branch of its railway," and that by said ordinance the said Company was authorized and empowered to extend the Garden Street branch of its railway from the existing track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and along said Quincy street to the intersection of Lincoln Avenue, and to equip and operate said extension and its Garden Street branch for a period of twenty-five years from and after the passage of said ordinance; that said ordinance was accepted by the said Company, the extension thereby authorized was made, and the street railroad was operated and maintained in accordance with the terms and conditions of said ordinance, by means whereof the said ordinance became a new contract between the said East Cleveland Railroad Company and the City of Cleveland and substitutes the provision therein contained as to the date of the expiration of the rights and privileges of The East Cleveland Railroad Company for its Garden Street branch for the terms and conditions as to the expiration of any previously existing ordinance or contract between said parties, whether obtained from the Council of the City of Cleveland, the Trustees of East Cleveland Township, or the Council of the Village of East Cleveland or from the State of Ohio previous to the 14th day of May, 1878, or at any other time.

7. And this defendant further says that on the 10th day of March, 1890, the Council of the City of Cleveland passed another ordinance entitled "An ordinance granting The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;" that by said ordinance, the right was granted said Company to operate its Garden Street branch by electricity "*i. e.* from the intersection of Prospect and Erie Streets, along Erie Street to Ohio Street, along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street, and along Quincy Street to Woodland Hills Avenue;" and that the authority thereby granted was to continue during the term of the present grant of said Company for its Garden Street branch, its present grant being the ordinance cited in the last paragraph; that this ordinance was accepted by said Company and electric motive power was substituted on said street railroad for animal power, and thereby said ordinance became and is a contract between said parties made upon a good and sufficient consideration and binding between them as to the date of expiration, and the date of expiration fixed therein being substituted for any date for any previous contracts or ordinances between said parties, no matter from what source the same was obtained nor by whom made.

This defendant says that the streets and avenues covered by the two ordinances last pleaded are those mentioned and described in the complainant's original Bill, and its contract rights upon which it is asserted are impaired by Ordinance # 42240 set forth in Paragraph 18 of the complainant's original bill.

This defendant, therefore, files this amendment to its original

answer to meet the allegations of the amendment heretofore filed by the complainant to its Bill of Complaint, and it prays as in its original answer it has already prayed, to be hence dismissed with its reasonable costs in this behalf expended.

GARFIELD, HOWE & WESTENHAVER,
Attorneys for Defendant.

STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn says that he is the President of The Forest City Railway Company, a corporation, the defendant herein, and that the allegations contained in the foregoing amendment to its answer are true as he verily believes.

M. A. FANNING.

Taken, sworn to and subscribed before me this 25th day of May, A. D. 1905.

M. J. RUDOLPH,
[SEAL.] *Notary Public.*

151 (Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Amendment to Answer. Filed May 27, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

(*Motion of Complainant for Continuance.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY CO., Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Motion of Complainant.

The complainant respectfully moves the court to continue this cause until the next term of this court, and thereafter until such time as there shall be a final determination in the litigation now pending wherein William M. Raynolds, a taxpayer on behalf of the City of Cleveland, is plaintiff, and the City of Cleveland and The Forest City Railway Company are defendants, in which litigation is involved the validity of the ordinance of the City of Cleveland known as ordinance No. 42240, passed January 11th, 1904, and set forth in the bill of complaint herein; and for cause, complainant shows:—

1. The complainant in this cause invokes the jurisdiction of the Court upon the ground that said ordinance of January 11th, 1904,

constitutes an impairment of the contract rights of the com-
152 plainant with the City of Cleveland, and the cause as made by the complainant involves the assumption that said ordinance of January 11th, 1904, is a valid legislative act of the City of Cleveland except insofar as it is an impairment of complainant's contract rights.

2. Since the filing of the bill herein and the ruling of the court denying the application for a temporary injunction, there has been finally adjudicated in the Court of Common Pleas of this county the action of William M. Raynolds a Taxpayer, *vs.* The City of Cleveland, and The Forest City Railway Company, wherein the said ordinance of January 11th, 1904, was attacked by said taxpayer upon the ground that it was passed by the City of Cleveland without authority of law and in contravention of the statutes in such cases made and provided; and judgment has been entered adjudging said ordinance void; and complainant submits, as part of this motion, the opinion of Lawrence, Judge of said Court of Common Pleas, filed in said cause.

3. The defendants herein, who are defendants in said suit of Raynolds, taxpayer, have given notice of their intention to appeal from the judgment of said Court of Common Pleas to the Circuit Court of said County, but as yet said appeal has not been perfected.

4. The complainant shows that, so long as the judgment so rendered in said Court of Common Pleas is in force, there is no ordinance of January 11th, 1904, as in complainant's bill alleged, and no ground remains upon which complainant can properly ask this court for the relief prayed for in this bill. If said judgment of the Court of Common Pleas shall be appealed from, the complainant shows that such appeal will be reached for hearing in the near future in the Circuit Court, and if in said Circuit Court the same judgment should be rendered as was rendered in said Court of Common Pleas, in such case there will be no ordinance remaining in force which would support the jurisdiction invoked by the complainant
153 herein and entitled it to make the question which it seeks herein to make.

5. If, pending the final determination of said suit in the State Courts, this cause should pass into final decree and complainant should seek to review the action of the Court on appeal, and, pending such appeal, it should be determined in said litigation in the state Courts that said ordinance of January 11th, 1904, was void for the reasons in said State Court proceeding alleged, and such situation were called to the attention of the Supreme Court where such appeal was pending, said court might and probably would decline to consider the question involved in said appeal upon the ground that the question presented was a moot cause and not an actual question involving the actual rights of the parties.

6. The complainant submits that the continuance of this cause until the validity of said ordinance is finally adjudicated in the State courts will preserve the rights of all parties in this litigation, whereas, the refusal of such order and to compel the complainant in the circumstances to proceed with the cause to final decree under the

ruling of this court as already announced, would be to compel the complainant, for the protection of its ultimate rights in the premises, to dismiss the bill in this cause, which it respectfully advises the court it will do if the court is of opinion that this application for a continuance should not be granted.

THE CLEVELAND ELECTRIC RAILWAY COMPANY.
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

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No. 90622.

STATE OF OHIO, *Cuyahoga County.*

In the Court of Common Pleas.

WILLIAM M. RAYNOLDS, as a Taxpayer on Behalf of the City of Cleveland, Plaintiff,
vs.
THE CITY OF CLEVELAND ET AL., Defendants.

Opinion Rendered May 4, 1905. Lawrence, J.

THE STATE OF OHIO, *Cuyahoga County, ss:*

In the Court of Common Pleas.

No. 90622.

WILLIAM M. RAYNOLDS, as a Taxpayer on Behalf of the City of Cleveland, Plaintiff,
vs.
THE CITY OF CLEVELAND ET AL., Defendants.

Opinion Rendered May 4, 1905.

LAWRENCE, *J.:*

William M. Raynolds, a taxpayer of the City of Cleveland, brings this action on behalf of the said city, against the City of Cleveland, The Forest City Railway Company, and the members of the board of public service of said city, the solicitor of said city having failed and refused to bring the action after being requested, in writing, by the plaintiff so to do.

The object of the action is to enjoin the performance of a contract between said city and the defendant. The Forest City Railway Company, embodied in an ordinance passed by the Council of said city on the 11th day of January, 1904, and approved by the Mayor January 20, 1904, which purports to grant to The Forest City
155 Railway Company, its successors and assigns, the renewal right to maintain and operate a double track street railroad,

with the necessary equipment and appliances, in the following streets and parts of streets in said city, commencing at the intersection of Prospect and Erie Streets, thence southerly on Erie street to Central Avenue, and thence easterly on Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue, and thence easterly on Quincy Street to Woodland Hills Avenue, for the term of twenty years from and after the 22nd day of March, 1905.

This ordinance contains various recitals to the effect that the rights and franchises then possessed by The Cleveland Electric Railway Company to construct, maintain and operate an electric street railroad on the said streets and parts thereof would expire by limitation on the 22nd day of March, 1905; that the council of said city had the right to renew such rights and franchises at their expiration to such person or corporation and upon such terms and conditions as may be considered conducive to the public interests; that The Forest City Railway Company had made written application to the council for the renewal to it of such rights and franchises, upon the terms which are deemed by the council to be conducive to the public interests and the best terms that can be obtained therefor; and that The Cleveland Electric Railway Company, denying that its said rights and franchises would expire at the time named, declined to make any proposition for a renewal thereof.

The rights undertaken to be granted by said ordinance are to maintain and operate the existing street railroad in the streets mentioned, not to construct a new street railroad therein, and, amongst other terms and conditions, it is provided that "the grantee shall pay to the owner of the track, poles, wires and appliances
156 erected in the highways along the route herein described and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22, 1904, together with twenty per cent. added to such valuation, provided that such valuation can, at or before December 22, 1904, be agreed upon between the said grantee and the said owner such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable, on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash."

It is further provided that in case the said grantee fails to begin the operation of the street railway therein mentioned on the 23rd day of March, 1905, the council shall thereupon have the right to forfeit such grant, unless such failure or delay be due to legal proceedings or unavoidable cause.

Prior to the passage of said ordinance The Forest City Railway Company had no rights, grant or franchises of any kind to construct, maintain or operate a street railroad on any of said streets, or in any street crossing or intersecting the same, nor did it then or

does it now have any tracks, poles, wires or appliances in any of said streets, but all rights in that behalf theretofore granted by the council of said city were then held and possessed solely by The Cleveland Electric Railway Company.

It also appears that prior to the passage of said ordinance no action had been taken by the council to establish or define a street
157 railway route over and along the streets named, except such action in that behalf as had been had before the granting of the franchises and privileges held by The Cleveland Electric Railway Company. No public notice was given of any application for the construction of a street railroad in said streets, and no action inviting proposals for such purpose was had, nor was the written consent of any property holders on said streets or any of them obtained or produced to the council by The Forest City Railway Company prior to the passage of said ordinance of January 11, 1904. The only consents ever obtained for the construction of a street railroad in any of said streets, were those which were obtained, produced and filed with the council prior to the passage of the original ordinances granting the franchises and privileges owned and possessed by The Cleveland Electric Railway Company, at the time of the passage of said ordinance of January 11, 1904.

The plaintiff claims that the council had no authority or right to grant to The Forest City Railway Company any renewal right to maintain and operate a street railroad in any part of the streets named in said ordinance of January 11, 1904, and that said ordinance is illegal and void, both because the rights and franchises then possessed by The Cleveland Electric Railway Company were still in force, and unless abandoned by it, would remain in force until July 1, 1914, and because, in any event, there was no authority of law for granting to The Forest City Railway Company a renewal of rights not previously granted to it but which had been granted to another company and which were then held and possessed by The Cleveland Electric Railway Company.

The position of the defendants is that the franchises and privileges in said streets possessed by The Cleveland Electric Railway
158 Company expire on the 22nd day of March, 1905, and that it was within the power of the City Council to renew the same, at their expiration, either to the last named company or to a stranger to the original grants, without establishing a street railroad route, without inviting competitive bids and without obtaining the consents of any property owners.

There are a number of other questions connected with the two principal questions which I have indicated, but I do not deem it necessary to specially refer to them here.

Of these two principal questions I shall first consider the power of the council to renew a grant, at its expiration, to one who is a stranger thereto, for unless such power exists it is immaterial, for the purposes of this case, whether or not the rights and franchises of The Cleveland Electric Railway Company expire on March 22, 1905.

There is no dispute between the parties as to what steps are required to originally define and establish a street railroad route nor as to

the proceedings necessary for the construction of a street railroad in the first instance in pursuance of such establishment, or by way of an extension of existing tracks. It is conceded that nothing of this kind has been done here, and that the ordinance of January 11, 1904, is not valid unless the council had power, solely by way of a renewal, to grant to The Forest City Railway Company the franchises and privileges then possessed by The Cleveland Electric Railway Company by virtue of previous ordinances.

It has been suggested by Judge Hull of the Lucas County Circuit Court, in the case of Hattersley *v.* Waterville, 26 C. C. 226, that possibly our street railroad statutes, in view of recent decisions of the Supreme Court form a part of the great number of unconstitutional laws on our statute books, but this question was not decided in that case nor was it argued before me, and I shall consider
159 this case on the basis that these statutes are constitutional and valid.

In the opinion referred to, Judge Hull also expresses the view of himself and Judge Haynes that, regardless of the statutes relating to street railroads, it is within the general powers of a municipal corporation to permit the construction and operation of street railroads through its streets, and that the effect of these statutes is to restrict in some measure and regulate the power of the municipal corporation. I shall not stop, however, to examine the question of what would be the rule if we had no statutes specifically relating to street railroads, for it seems to me that the statutes on this subject are not only a limitation but a grant of power, which embraces the whole subject-matter of the construction, extension and operation of street railroads and the renewal of grants previously made.

The statute material here is section 2501 Revised Statutes, which is as follows:

"SEC. 2501. No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

As has been observed, the council of the city of Cleveland did not attempt to grant to The Forest City Railway Company any right to construct a street railway on the streets mentioned. The authority to give to said company the right to maintain and operate the existing street railroad there constructed is claimed by virtue of the last clause of section 2501, which provides that the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest. It thus becomes important to determine what is meant by the terms "any such
160 grant" and also what is meant by the term "renew" as here used.

Evidently such grant has reference to the grant of permission both

to construct and operate a street railroad on the designated streets. A grant, however, is not the same as the thing granted. It is the act, whether by deed or other instrument or by governmental action whereby property or rights are transferred from the grantor to the grantee.

Anciently a grant was the method by the common law of transferring the property of incorporeal hereditaments or such things whereof no livery can be had.

2 Blackstone's Com., 317.

A grant is a contract executed. In its own nature it amounts to an extinguishment of the right of the grantor and implies a contract not to reassert that right.

Fletcher *v.* Peck, 6 Cranch 87 (135).

A number of definitions of the term are collected in the case of Toll Road Co. *v.* Edwards, 3 Colo. App. 74, among which are the following:

"Grant: An act evidenced by letters patent granting something from the King to a subject."

"Public grant is the mode and act of creating a title in an individual to lands which had previously belonged to the government."

It is essential to a valid grant that there be a grantee capable of holding, who must be either named or so described that he can be definitely ascertained.

Thomas *v.* Marshfield, 27 Mass., 364.

Jackson *v.* Corey, 8 Johns., 385.

A person who is not a party to a deed cannot take anything by it, unless it be by way of remainder.

Hombeck *v.* Westbrook, 9 Johns., 73.

In the case of the State *v.* Bell, 34 O. S. 194, it was held that under sections 411 and 412 of the Municipal Code of 1869,
161 a grant must be made by ordinance directly to a corporation or individuals to be named therein, and in the opinion it is said that there can, in such case, be no grant without a grantee expressly named therein.

In my opinion the term grant, as used in section 2501, comprehends not merely the franchise, which is the thing granted, but the grantor, to-wit: the public, and the grantee, to-wit: the individual or corporation to whom the permission is granted, and when the statute provides that the council may renew such grant at its expiration, it necessarily means the grant to the original grantee or its successors.

The word "renew" has been variously defined. In Carter *v.* The Brooklyn Life Insurance Co., 110 N. Y. 15 (22) the court says:

"To renew in its popular sense, is to refresh, revive or rehabilitate an expiring or declining subject, but is not appropriate to describe the making of a new contract or the creation of a new existence."

In Koehler *v.* Hussey, 57 S. W. (Ky.) 241, the court quote- with approval the following from Colebrook on Collateral Securities:

"The renewal of a negotiable bill or note representing the principal

indebtedness, for the payment of which collateral securities have been deposited does not affect the right of a creditor to retain or enforce the collateral securities, as a means of obtaining payment of the note or bill given in renewal, as in the case of the original evidence of indebtedness * * * the transaction is regarded simply as a prolongation of the original contract.

In Kollock *v.* Kaiser, 98 Wis. 104, it is held that a covenant to renew a lease implies the making of a new lease, but the court also hold that a general covenant in a lease to renew implies an additional term, upon the same terms, including that of rent, except the covenant to renew.

In Kedey *v.* Petty, 153 Ind. 179 (184), it is said:

"Renewed or renewal, as applied to promissory notes, in commercial and legal parlance, means something more than the substitution of another obligation for the old one. It means to
162 reestablish a particular contract for another period of time. It means to restore to its former conditions."

I do not, however, attach controlling importance to the use of the word "renew." It has been said to have no legal or strictly technical signification.

Russell *v.* Phillips, 14 Q. B. 892.
Flanagin *v.* Hambleton, 54 Md. 227.
Spinhaur *v.* Mallory, 21 Ind. App. 287.

If the word be applied to a subject matter of itself importing a new contract, I should be inclined to say that it was sufficiently flexible to admit of a construction consistent with such application, but when the subject matter is an existing executed contract between a particular grantor and a particular grantee, a renewal of that contract can only mean the revival or reestablishment thereof between the same parties of their privies for an additional period of time.

In this case, therefore, I am of the opinion that the council had no power to make the so-called renewal grant to The Forest City Railway Company of which complaint is made. The unreasonableness of any other view is well illustrated by the course which the city council took in attempting to grant to one company the franchise for a street railroad under the form of renewing a previous grant to another company. Evidently it was felt that to grant the right to construct a street railroad would make a new contract, and the only alternative was to undertake to transfer to the new company the tracks, poles, wires and appliances of the old company now in said streets, upon condition of paying the value thereof to the owner, to be agreed upon between the parties, together with twenty per cent. added to such valuation, but, if the parties, do not agree on or before December 22, 1904, then to pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valua-
163 tion is so adjudicated. This is plainly an attempt to appropriate private property without authority of law and without making compensation in advance, and if carried out would deprive the owner of its property without due process of law. In my

opinion the provision to that effect of itself makes the ordinance invalid, for without it the ordinance can not be operative.

Having, for the reasons already stated, reached the conclusion that the council had no power in any event, to grant to The Forest City Railway Company the renewal right to maintain and operate the existing street railroads in the streets mentioned and that said ordinance of January 11, 1904, purporting to make such grant is wholly void, it becomes unnecessary to consider the further question whether or not the franchise of The Cleveland Electric Railway Company on said streets expired on the 22nd day of March, 1905. As the last named company is not a party here and as the question of the date of the expiration of its said franchise is directly involved in litigation in the federal courts, to which said company is a party, it seems proper that this court should avoid that question, the determination of it not being necessary for the decision of this case.

As to the questions whether, in the event of the expiration of a grant to one company to construct, maintain and operate a street railroad in certain streets, the council can make a grant to another company of a franchise in the same streets, without proceedings to establish and define a street railroad route therein, and whether in the case of such grant it is necessary to obtain the consents of owners of property abutting on such streets, I also express no opinion, for these questions were not fully argued. I feel certain, however, that, if a new grant is made, it must be after public notice of the application, and to the corporation, individual or individuals, that
164 will agree to carry passengers at the lowest rates of fare.

An injunction will be allowed as prayed for in the amended petition.

(Endorsements on Motion:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* City of Cleveland and The Forest City Railway Co., Defendant. Motion of Complainant for continuance, &c. Filed May 27, 1905. Irvin Belford, Clerk. Squire, Sanders & Dempsey, Cleveland.

165 (*Order Denying Motion for Preliminary Injunction,*)

April Term, A. D. 1905, to wit: June 1, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The complainant having filed its Bill of Complaint and the amendment thereto, and the defendants, The City of Cleveland and The Forest City Railway Company, having filed their separate an-

swers and separate amendments to each of said answers, this cause came on to be heard on the motion of the complainant for a preliminary injunction, as prayed for in its Bill and the amendment thereto, and on the evidence, and was argued by counsel.

Whereupon, the Court, being fully advised in the premises, is of opinion to, and doth, adjudge, order and decree that said motion for a preliminary injunction be, and the same is hereby, denied.

And, on the request and the motion of said complainant, it is ordered by the Court, that leave be, and the same is, given to the complainant to file an amended bill in this cause on or before the first day of September next, and this cause is continued until the next term of this Court.

166 *(Order Continuing Cause.)*

April Term, A. D. 1905, to wit: October 2, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

CLEVELAND ELECTRIC RY. CO.
vs.
CITY OF CLEVELAND, ET AL.

This cause is continued to the next term of this Court.

(Motion for Entry of a Final Decree, etc.)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant.

Now come the defendants and move the Court to hear the above entitled cause and to enter a final decree therein in accordance with its opinion in this cause on the 24th day of April, 1905, a copy of which decree is hereto annexed.

This motion will be for hearing on Saturday, October 7th, 1905, at 9:30 o'clock A. M., or as soon thereafter as it may suit the convenience of the Court to hear the same.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

167 Service of the foregoing motion is hereby accepted this 2nd day of October, in the year 1905.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY, *Its Attorneys.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

This cause came on to be finally heard this — day of October in the year 1905, on the papers and proceedings heretofore read and had herein, and was argued by Counsel.

Whereupon the Court being fully advised in the premises, is of opinion and doth find that the rights and franchises of the complainant under and by virtue of the contracts pleaded as set forth in its bill of complaint and the amendment thereto expire with the 22nd day of March, in the year 1905, on the streets and avenues of the City of Cleveland commencing at the intersection of Prospect and Erie Streets in said City; thence southerly on, over and along Erie Street to Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly on, over and along Quincy Street to Woodland Hills Avenue, and that the ordinance of the City of Cleveland known as Ordinance # 42240 passed by the Common Council of said City on the 11th day of January, 1904, approved on the 20th day of January, 1904, and set forth in paragraph 28 of the
168 complainant's Bill, does not impair any existing contract right between the said complainant and the City of Cleveland.

It is therefore adjudged, ordered and decreed by the Court that the complainant's bill be and the same is hereby dismissed, and that the defendants recover of and from the complainant their costs in this behalf expended, the same to be taxed by the Clerk of this Court.

(Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Motion for entry of a final decree. Filed Oct. 2, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for ——.

(Order Granting Complainant Leave to File, etc.)

October Term, A. D. 1905, to wit: October 3rd, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

In this cause on application of complainant by its solicitors leave is granted it to file its Amended Bill herein instanter which Amended Bill is accordingly filed.

169 *Amended Bill of Complaint.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amended Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division:

The above-named complainant, The Cleveland Electric Railway Company, a corporation duly organized and existing under the laws of the state of Ohio, brings this its amended bill of complaint against the above-named defendants, the City of Cleveland, which is a municipal corporation of the state of Ohio, within said District, and The Forest City Railway Company, which is a corporation of the State of Ohio, having its principal office in said District; and says:—

I.

The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the City of Cleveland and vicinity, as in this amended bill hereinafter more particularly set forth.

II.

The defendant, the City of Cleveland, is a municipal corporation organized under the laws of the state of Ohio, and, as respects the

matters and things hereinafter set forth as to the ordinances
170 affecting this complainant, said defendant acts and has acted under delegated power from the legislature of the State of Ohio; and, so acting, has, by legislature enactment, made sundry contracts with your orator and its predecessors in interest under which it is now operating said lines of railway in the City of Cleveland; and, as respects certain portions of said lines, hereinafter described, the original rights of your orator for the operation of street railroads in the streets therein described were acquired from the Village of East Cleveland and the Township Trustees of the Township of East Cleveland, which, at the time of making such grants, were independent municipalities adjoining upon the east the territory then comprising the City of Cleveland; and thereafter, in October, 1872, the territory theretofore comprising the Village of East Cleveland and portions of the Township of East Cleveland were acquired by annexation and became part of the defendant, the City of Cleveland; and, by such annexation, and insofar as it included territory in which the predecessors of your orator were operating street railroads under grants from said Village of East Cleveland and said Township of East Cleveland, the annexation of such territory by the City of Cleveland in no wise affected the legal rights of the predecessor of your orator under its then existing contracts with the Village of East Cleveland and the Township Trustees of the Township of East Cleveland.

The defendant, The Forest City Railway Company, is a corporation organized under the laws of the state of Ohio for the purpose of constructing, maintaining, and operating lines of street railway in the City of Cleveland.

II.

That the amount in controversy in this action, which is a civil action, exceeds, exclusive of interest and costs the sum of five thousand dollars, and is a controversy arising under the Con-
171 stitution of the United States, in this;—that your orator seeks relief against the defendants in this amended bill by reason of an attempt on the part of the defendant to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator and taking from it its property without due process of law, in contravention of and in violation of the Constitution of the United States.

III.

Your orator shows, by way of explanation and in order to avoid repetition in this bill, that "Garden Street," and "Ohio Street," as referred to in the several ordinances hereinafter mentioned, and otherwise referred to, were subsequently united under one name and designated "Central Avenue," which is the name by which said former Garden Street and Ohio Street are now known.

IV.

Your orator is a consolidated company organized in the year 1893, and was formed by the consolidation of the following-named constituent companies which, at and prior to the consolidation, owned and operated street railways in the City of Cleveland under ordinances duly passed by said municipality and accepted by said companies; and, by the terms of such consolidation and the force and effect thereof as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges, and property, possessed by said constituent companies and each of them. The constituent companies so consolidated were as follows:

The East Cleveland Railroad Company, which was operating lines of street railway in said city described generally as the Prospect Street and Euclid Avenue line, together with the Wade Park Avenue, Cedar Avenue, and Garden Street, lines and various branches and extension thereof.

172 The Broadway & Newburgh Street Railroad Company, which was operating a line of street railway from Newburgh (at that time a southern suburb of the city of Cleveland) to the central part of the city.

The Brooklyn Street Railroad Company, which was then operating a line from Brooklyn (then a suburb of said city) and the so-called South Side of said City, to and through the Public Square, through Ontario Street and Scovill Avenue, to the southeasterly portion of the city.

The South Side Street Railroad Company, which was operating a line of railway from the South Side so-called, through Scranton and Jennings avenues.

And your orator shows that each of said companies, by the *the* consolidation of which your orator was formed, was operating under grants from the city of Cleveland authorizing the continued operation of said roads for a period of years, and no one of which grants expires before the first day of July, 1914.

V.

Your orator is also the owner, by purchase, of all and singular the lines of railway, rights, privileges and franchises, of The Cleveland City Railway Company; such lines of railway, rights, franchises and privileges, having been so acquired by your orator by purchase on or about July 1st, 1903. Said The Cleveland City Railway Company, the property of which was so purchased by your orator and of which it is the successor in interest as aforesaid, was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railroad Company and The Cleveland City Cable Railway Company, each of which companies was a corporation organized under the laws of the state of Ohio for the purpose of operating lines of street railway in the city of Cleveland; and,

173 at the time of such consolidation, The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as the Woodland Avenue Lines and the

West Side lines; and The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior and St. Clair streets to the easterly limits of the city: None of the grants under which said The Cleveland City Cable Railway Company was operating expires before July, 1914.

VI.

The total mileage of single track which is operated by your orator, as the successor in interest of all of said various companies hereinbefore mentioned, is about 236 miles, of which the mileage of the lines described in the ordinance of the City of Cleveland passed January 11th, 1904, purporting to grant certain rights to defendant The Forest City Railway Company, and hereinafter more fully set forth, is about 12 miles.

VII.

Your orator's contracts with the City of Cleveland, growing out of said various consolidations and the obligations imposed by the various ordinances hereinafter referred to, require it to operate said entire system, and, as part thereof, to operate through cars over different portions of said lines, and to give transfers from one line to another, as defined in the ordinances of the city of Cleveland; and your orator shows that such obligations upon its part are continuing obligations, running to the expiration of its grant from the city of Cleveland, to-wit: in 1914.

VIII.

Of the lines of railway of which your orator is so the owner and now operating, the first was constructed by The East Cleveland Railroad Company. Said East Cleveland Railroad Company was
174 incorporated in the year 1859 under authority of the incorporation law then existing in the state of Ohio known as the act of May 1st, 1852; and on November 1st, 1859, July 3rd, 1860, and April 15th, 1862, said East Cleveland Railroad Company received the consent and permission of the city of Cleveland for the operation of a line of railway beginning at the easterly city limits at Willson Avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street, Euclid Avenue, to and around the southerly and westerly sides of the Public Square to and in Superior Street, and through Superior Street to Water Street. The consents which were so given by said City of Cleveland to the occupancy of said streets by said East Cleveland Railroad Company were for the period of twenty years from September 20th, 1859; and, under and in pursuance of such consents, and by authority of the charter of said company and the powers conferred by said Act of 1852, the lines of railway therein authorized were shortly thereafter constructed and put in operation, and constituted the Main Line of The East Cleveland Railroad Company.

IX.

On July 23rd, 1862, the said East Cleveland Railroad Company, in pursuance of its charter right to agree with the trustee- of East Cleveland Township, which township adjoined the City of Cleveland upon the East, for the occupancy by its railroad of streets within said township, acquired, by contract with the Trustees of East Cleveland Township, a right to construct and operate a street railroad in Euclid Avenue easterly from the intersection of Willson Avenue to Doan's Corners so-called, being now the corner of Euclid Avenue and Fairmount Street. Under said grant, the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of and part of the main line of said East Cleveland Railroad Company; so that upon the completion of said ex-
175 tension, the main line of said company was extended easterly from Willson Avenue to Doan's Corners so-called, now the Corner of Euclid Avenue and Fairmount Street; and as hereinbefore set forth, the territory, then part of the Township of East Cleveland, in the year 1872 became by annexation part of the City of Cleveland.

X.

Said main line of said East Cleveland Railroad Company having been constructed and put in operation under the contracts aforesaid between the City of Cleveland and said company and between the Township Trustees of East Cleveland Township and said company, on or about January 14th, 1868, the council of the city of Cleveland granted to said East Cleveland Railroad Company, by contract then duly executed between the parties, the right to operate a street railroad in connection with its main line and as an extension thereof, beginning at the intersection of Prospect and Brownell streets; thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue, to the center of Willson Ave. the easterly boundary of the City of Cleveland. Said contract between said City of Cleveland and said East Cleveland Railroad Company to so construct such *such* extension of its main line out Garden Street as aforesaid was to continue, as therein expressed, during the period of twenty years from and after January 14th, 1868. And it was also in said contract provided that said East Cleveland company should have the right to continue to use and occupy the streets, avenues and public grounds, over which its main line was then constructed and operated, westerly from the junction of said road with the main line to its westerly terminus for the same period of time. And thereby your orator shows that it was agreed between the said East Cleveland Railroad Company and the City of Cleveland that said company should have the right to construct and operate said road upon Brownell and Garden streets in connection with its main line, and to continue the operation of said Garden
176 Street extension and its main line from Brownell and Prospect streets westerly in Prospect to Erie streets in Erie from Prospect Street to Euclid Avenue; in Euclid from Erie Street to and

around the southerly and westerly sides of the Public Square to Superior Street; thence westerly in Superior Street to Water Street. The grant or contract so made was duly accepted by said East Cleveland Railroad Company and the lines of railway therein authorized constructed and put in operation; and thereby your orator in pursuance of its chartered powers acquired directly from the State of Ohio, and by the permission and consent of the City of Cleveland, possessed and acquired the right to operate its said main line and extension thereof from Brownell Street to Garden Street and through Garden to the easterly limits of the City of Cleveland to January 14th, 1888, under the terms and conditions of said contract so made.

XI.

At the time of the construction of said Garden Street extension of said main line of the East Cleveland Railroad Company, a portion of the Village of East Cleveland which lay adjoining the easterly limits of the city of Cleveland, and is now, as hereinbefore set forth, part of such city, was without street railroad facilities upon Garden Street as it extended through said Village of East Cleveland; and on or about March 30th, 1868, the council of the Village of East Cleveland, being applied to by said East Cleveland Railroad Company to consent to the construction and operation by it of a line of street railroad upon Garden Street in said Village of East Cleveland as an extension of its line upon Garden Street, beginning at the easterly line of the City of Cleveland in Willson Avenue, and thence easterly to the center of Garden Street at its intersection with the center line of Baden Street, thence southerly in the center line
177 of Baden Street to the southerly line of Wade Street, by ordinance duly passed and accepted by said East Cleveland Railroad Company, consented to the construction and operation of the above described railroad upon Garden Street, and, by said ordinance, fixed various terms and conditions relating to the construction and operation of said line of street railroad. And your orator shows that it duly accepted said ordinance so passed by said Village of East Cleveland, and the Railroad therein authorized was constructed and put in operation. And your orator further shows that, in pursuance of its chartered powers and the statutes then existing and in such cases made and provided, it thereby acquired from said Village of East Cleveland the right to the continued operation of its street railroad therein and in the streets therein described for and during its corporate life; there being in said ordinance so passed by said Village of East Cleveland no limitation as to the duration of time during which said Village consented to the operation of said line of street railroad, whereby your orator acquired and still possesses the right, by contract between the said East Cleveland Railroad Company and the Village of East Cleveland, to maintain and operate, in connection with and as part of an extension of its main line, the lines of railroad so authorized by said Village of East Cleveland in said ordinance of March 30th, 1868. And your orator shows that, when the territory of the Village of East Cleveland, through which said East Cleveland Railroad Company so

acquired the right to operate its lines o railroad, was annexed to the City of Cleveland, such annexation co d not and did not impair or in any wise limit or affect the right wh. h the said East Cleveland Railroad Company then possessed to the continued operation of its railroad in said territory.

XII.

178 On or about August 2nd, 1870, the Village of East Cleveland made an agreement with the East Cleveland Railroad Company, by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and in and by said agreement it was recited that said tracks "have been constructed and operated upon the southerly side of the carriage way of said Euclid Avenue, and being an extension or branch of its main line of road located in the city of Cleveland.

XIII.

On or about March 25th, 1873, the said East Cleveland Railroad Company and said City of Cleveland, desiring to have the Garden Street line of said East Cleveland Railroad Company connected with the main line at the intersection of Erie and Prospect Streets instead of as originally at the intersection of Prospect and Brownell streets, the City of Cleveland, by resolution duly accepted and acted upon by the said East Cleveland Railroad Company, granted permission to said company to lay a double-track street railroad from its main line at the intersection of Erie and Prospect Streets, through Erie to Ohio st. thence through Ohio to Garden Street, connecting with the Garden Street extension at this point as the same had originally been constructed; and requiring that the said company should, upon the completion of said tracks in Erie and Ohio Streets, take up and remove its tracks in Brownell Street from the main track in Prospect Street to Ohio Street, whereby, under authority of said resolution and the same having been carried out, the line of the Garden Street extension of such original main line was as follows; Intersecting the main line at Prospect and Erie streets; thence running through Erie Street to Ohio Street; thence through Ohio to Garden Street; thence through Garden to Baden Street; thence through
179 Baden to Quincy Street; and by virtue of the contract obligations and rights established by the acceptance of said resolution, the East Cleveland Railroad Company was required to operate said Garden Street extension in connection with said line, and over that portion of the main line beginning at the intersection of Erie and Prospect streets, continuing through Erie to Euclid Avenue, through Euclid to and around the Public Square to Superior Street, and in Superior to Water Street, as hereinbefore stated.

Your orator further shows that, in said resolution of March 25th, 1873, so authorizing the construction and operation of the part of said Garden Street extension in said resolution and in this paragraph described, there was no limit of time fixed by the council at which the right so granted or the consent so given should terminate or expire; whereby your orator shows that the said East Cleveland Rail-

road Company, by the acceptance of said resolution and the building and construction of the road therein authorized, acquired the right, during the life of its charter, to continue the operation of the line of road therein described.

And on the same day that said resolution in this paragraph described was so passed by the city council, it duly passed another resolution whereby it consented that the East Cleveland Railroad Company might lay a second or double-track in Garden Street between Brownell Street and Willson Avenue on the condition that in such new construction a five-inch or tram rail be used upon both of said tracks; which last mentioned resolution was duly accepted by said East Cleveland Railroad Company and the double-track street railroad therein authorized built and constructed, which construction involved the abond-ment of the original single track constructed on said street; whereby, by virtue of said two resolutions of March 25th, 1873, in this paragraph described, your orator shows that said East Cleveland Railroad Company received permission from said city of Cleveland to construct and operate *permission from*
180 *said City of Cleveland to construct and operate* a double-track street railroad from the intersection of Prospect and Erie streets through Erie to Ohio street, through Ohio to Garden Street, through Garden Street to Willson Avenue, and that, as respects the permission so given for a double-track between said points, there was not fixed by the city council any limit of time; and, by reason of such action on the part of said city council, the East Cleveland Railroad Company acquired, by virtue of its charter and said consent of the city, the right to continue the operation of said double-track during the existence of its charter. Whereby, under the authority of said resolutions and the same having been carried out, the line of the Garden Street extension of such original main line was as follows: Intersecting the main line at Prospect and Erie streets; thence running through Erie Street to Ohio Street; thence through Ohio to Garden Street; thence through Garden to Baden Street; thence through Baden to Quincy Street; and by virtue of the contract obligations and rights so established, the said East Cleveland Railroad was required to operate said Garden Street extension in connection with said main line and over that portion of the main line beginning at the intersection of Erie and Prospect Streets, continuing through Erie to Euclid Avenue, through Euclid to and around the public Square to Superior Street, and in Superior to Water Street, as hereinbefore stated; and your orator shows that by virtue of the said several contracts under which the said East Cleveland Railroad Company had so constructed its main line and said Garden Street extension thereof, it was required to operate said extension in connection with said main line, using a material portion thereof for the purpose of such operation.

181 XIV.

On or about May 23rd, 1876, an ordinance was duly passed by the council of the city of Cleveland and accepted by said East Cleveland Railroad Company, by which the said company was granted permis-

sion to extend its Garden Street line from the then easterly terminus thereof at Baden Street, along Baden to Quincy street, along Quincy to New Street, and along New to Garden Street, there to connect with the existing tracks upon Garden Street. And in and by said ordinance the said East Cleveland Railroad Company was required to equip and operate said Garden Street tracks as so extended in connection with and as part of its Garden Street extension and its main line of road, said main line being as hereinbefore set forth; whereby the said East Cleveland Railroad Company became obligated, as between it and the city, and acquired the right as between it and the City, to continue the operation of said Garden Street tracks as extended in connection with the main line of tracks of said East Cleveland Railroad Company. And in and by said ordinance it was provided that such rights were to continue for the period of twenty years whereby the said East Cleveland Railroad Company acquired the right, by express provision of said ordinance, to continue the operation of its entire system of main line and said Garden Street extension, and this extension of said Garden Street line, for the period of twenty years from May 23rd, 1876. And your orator shows that in said ordinance of May 23rd, 1876, is included territory, as respects part of which the said East Cleveland Railroad Company acquired its rights in the streets under the terms of its charter and by contract with the Village of East Cleveland, and in propetuity, and it as well includes certain portions of Garden Street, with respect to which the rights of said company were in the first instance acquired under
the terms of its charter and by contract with the city of Cleve-
182 land. And in and by said last-mentioned ordinance no reference is made to the rights of said East Cleveland Railroad Company as acquired from the Village of East Cleveland nor to the rights possessed by the company under contract with the city of Cleveland growing out of the acceptance of the resolutions of the city council of March 25th, 1873, hereinbefore set forth, and by which the city of Cleveland had consented that the said company might operate a double-track street railroad from the inter-section of Erie and Prospect streets through Erie, Ohio and Garden streets to Willson Avenue, without limitation of time for the duration of the right thereby granted; and the acceptance of said ordinance by the East Cleveland Railroad Company was without prejudice to the rights which it then possessed under its original contract with the Village of East Cleveland and the resolutions of the council of the City of Cleveland of March 25th, 1873.

XV.

On or about September 15th, 1879, the city council of the city of Cleveland passed another ordinance relating to the operation of lines of railroads of the said East Cleveland Railroad Company; said ordinance having been passed, as therein recited, by authority of an Act of the Legislature passed June 12th, 1879; and it being therein recited that the said East Cleveland Railroad Company then operated a street railroad in the city of Cleveland by virtue of a grant or permit previously obtained, and had made application in writing for

a renewal of such grant "and a permit to maintain and operate its said street railroad in and along the streets as heretofore and now located and operated, for the period of twenty-five years from and after the 20th day of September, 1879." And in the ordinance passed in response to such application, it was provided that the said East Cleveland Railroad Company, its successors and assigns, were
183 authorized to reconstruct, maintain and operate its double-track street railroad, with the necessary switches, turnouts and turntables, as theretofore constructed and then maintained and operated in the City of Cleveland. And in and by said ordinance portions of the streets of the city of Cleveland in which the said company had theretofore constructed and was then operating railroads were set forth, namely: The original main line of the company described from its westerly terminus commencing at the intersection of Water and Superior Streets; thence through Superior Street to and around the south and west roadways of Monumental Square to Euclid Avenue; thence through Euclid Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through Case Avenue to Euclid Avenue; thence through and along Euclid Avenue to Willson Avenue. But your orator shows and submits that said ordinance, in legal effect, granted to said East Cleveland Railroad Company the right to continue the operation of all of its lines of railroad theretofore constructed and in operation in Cleveland, including the main line which is in said ordinance described and the extension thereof which had been constructed upon Garden Street as hereinbefore set forth, and with respect to which extension the said East Cleveland Railroad Company was obligated to maintain and operate the same as part of and in connection with its main line until 1896. If the operation of said Garden Street line is to be controlled by the provisions of the ordinance of May 23rd, 1876; and if, as hereinbefore set forth, the portions of said line the right to operate which
184 was in the first instance derived from the Village of East Cleveland, and the portions of said line consented to by the resolutions of March 25th, 1873, are to be controlled by the provisions of the original contract between said Company and the Village of East Cleveland and its contract made with the city of Cleveland and its acceptance of said resolutions of March 25th, 1873, then it was obligated to maintain, and had the right to maintain and operate, its said Garden Street line in connection with its main line, in perpetuity; and, by the terms of said ordinance of September 20th, 1879, the said East Cleveland Railroad Company was authorized to continue the operation of its entire system for the period of twenty-five years from September 20th, 1879.

XVI.

On or about March 22nd, 1880, another ordinance was passed by the council of the City of Cleveland giving its consent to The East Cleveland Railroad Company for a further extension of its tracks in Garden Street which had been built and constructed under the various contracts between said company and the Village of East

Cleveland and the City of Cleveland, as hereinbefore set forth; and in and by said last mentioned ordinance the said East Cleveland Railroad Company was empowered to extend its Garden Street line from the intersection of Baden and Quincy streets in an easterly direction along Quincy Street to the intersection of Lincoln Avenue, and to equip and operate its said extension and its Garden Street line for the period of twenty-five years; which last mentioned ordinance was duly accepted by the East Cleveland Railroad Company and the extension therein authorized constructed and put in operation. And your orator shows that the right in said last mentioned ordinance granted is to equip and operate said extension and all of the Garden Street line; so that a portion of the line of rail-
185 road therein referred to includes the lines built or constructed under the contract between the East Cleveland Railroad Company and the Village of East Cleveland as well as portions of its line constructed under the permits and contracts hereinbefore set forth between said company and the city of Cleveland; and if the rights of said East Cleveland Company with respect to the operation of its said Garden Street line on March 22nd, 1880, became subject to the provisions of said last mentioned ordinance of that date, it was a right granted by the city of Cleveland to continue the operation of the lines until March 22nd, 1905; but your orator further shows that in and by said ordinance of March 22nd, 1880, no reference is made to the rights of said East Cleveland Railroad Company under its contract with the Village of East Cleveland nor as to its rights under contracts between it and the city of Cleveland by virtue of the resolutions of March 25th, 1873, hereinbefore set forth; and the acceptance by the said East Cleveland Railroad Company of said ordinance of March 22nd, 1880, was without prejudice to the rights which it then possessed derived from the Village of East Cleveland, under which its tracks were originally constructed in the year 1868, as hereinbefore set forth, and from the city of Cleveland under said resolutions of March 25th, 1873.

XVII.

On or about February 9th, 1885, the city council of the City of Cleveland passed another ordinance authorizing and empowering the East Cleveland Railroad Company to extend its Garden Street tracks; from the terminus of its then present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue, and to equip and operate said extension as a single-track railroad, with all necessary switches, turnouts and tur*b*-table, in connection
186 with its said Garden Street tracks and its main line; and in and by said ordinance providing that the grant therein made should terminate with the grant for the main line of the East Cleveland Railroad Company; which said ordinance so passed was duly accepted by said East Cleveland Railroad Company and the estension therein provided for built, equipped and put in operation, whereby your orator says that the city of Cleveland then agreed with the East Cleveland Railroad Company that said Company might continue the

operation of said extension of its Garden Street tracks in connection with the main line of said East Cleveland Railroad Company, and such right to terminate only with the grant for the operation of said main line; and your orator shows, as hereinbefore set forth, that the grant for the operation of the main line of said East Cleveland Railroad Company, insofar as it depended upon contract between said company and the city of Cleveland, did not expire prior to September 20th, 1904.

XVIII.

On or about June 17th, 1887, the council of the City of Cleveland passed another ordinance providing for the extension of tracks of the East Cleveland Railroad Company upon Garden Street; which ordinance was duly accepted by said company; the said extension thereby authorized being from the intersection of its then present track in Baden Street upon Garden Street, in an easterly direction along and upon Garden Street to the easterly line of Lincoln Avenue; and providing that the right to operate such extension should terminate with the grant for the Garden Street main line; and your orator shows, as hereinbefore set forth, that the grant for the Garden Street main line, insofar as the same had been constructed and put in operation under contract between the East Cleveland Railroad Company and the Village of East Cleveland in 1868, and insofar as the same had been constructed and put in operation under resolutions of the city council of Cleveland of March 25th, 1873, was a
187 grant terminating only with the corporate life of said East Cleveland Railroad Company, and insofar, if at all, as the termination of the right in Garden Street of the East Cleveland Railroad Company was controlled by ordinances of the City of Cleveland passed subsequent to March 25th, 1873, the rights upon Garden Street were co-extensive with the rights of said East Cleveland Railroad Company upon its main line, and did not terminate prior to September 20th, 1904.

XIX.

Thereafter on, July 13th, 1888, the city council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power; and in and by said ordinance it was provided that in consideration of the large expenditures of money and of the improved facilities to be afforded the public upon said main and Cedar Avenue lines, the grant therein made should continue in force for a period of twenty-five years from and after the date of the passage of said ordinance. Your orator further shows that, in pursuance of such authority, the said East Cleveland Railroad Company did proceed, at large expense, to equip said portions of its lines in said ordinances mentioned with electricity, and has and did at all times, and your orator has since the acquisition of said lines at all times, complied with all and singular the conditions and requirements of said ordinance. And your orator shows that, under the terms of said last mentioned ordi-

nance, the said East Cleveland Railroad Company was only required to equip a portion of its lines with electricity, but it was
188 therein provided that upon request of the council, it should extend the electrical equipment over other portions of its lines. And thereafter on or about May 13th, 1889, the council by resolution required of said East Cleveland Railroad Company the extension of the electrical equipment over its original and main line from Willson Avenue through Euclid Avenue to Case Avenue, through Case to Prospect Street, through Prospect to Erie Street, through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and through Superior to Water Street; and also such portions of its Cedar Avenue extension as had not theretofore been equipped with electricity. And your orator shows that a portion of said tracks so described, to-wit: from the intersection of Prospect and Erie streets to Water Street, constituted part and parcel of the Garden Street lines as originally constructed, so that the grant to operate said main line of the East Cleveland road for the period of twenty-five years with electricity as well included a portion of the Garden Street lines between the termini above mentioned. And your orator shows that, by virtue of said ordinance of July 13th, 1888, the City of Cleveland expressly granted the right to operate by electricity the main line of the East Cleveland Railroad Company and a portion of its Garden Street line until the 13th day of July, 1913.

XX.

On or about March 10th, 1890, the city council of the City of Cleveland passed an ordinance authorizing the East Cleveland Railroad Company to substitute electric motive power for horse power upon its Garden Street extension of its main line, as herein-
189 before more particularly described, and in and by said ordinance providing that the right to operate said Garden Street extension of said main line should continue during the term of the company's then present grant for the operation of tracks upon the Garden Street extension. And your orator shows that, by reason of the various ordinances hereinbefore referred to, the East Cleveland Railroad Company then possessed the right to continue the operation of its tracks upon Garden Street as authorized by the Village of East Cleveland in 1869 and by the council of the City of Cleveland by resolutions of March 25th, 1873, during its corporate life, and that there had been express permission granted to the East Cleveland Railroad Company by the City of Cleveland to continue the operation of its tracks upon Garden Street and the extensions thereof up to the termination of the grant for the operation of the main line of the East Cleveland Railroad Company, and, as hereinbefore set forth, the right to operate the main line of said company, under the contracts then existing between it and the city of Cleveland, did not and do not expire prior to July 13th, 1913, whereby the said East Cleveland Railroad Company, by virtue of the ordinances hereinbefore set forth, and upon the acceptance of the same and the expenditure of large sums of money for the equipment of said Garden Street extension with electricity, acquired from the council of the

City of Cleveland the right to continue the operation of said Garden Street tracks and extensions by electricity until the 13th day of July, 1913; and which said grant was accepted by said The East Cleveland Railroad Company without prejudice to its rights upon Garden Street derived by contract with the Village of East Cleveland and contracts between said company and the city of Cleveland as hereinbefore set forth.

190 **XXI.**

On or about March 30th, 1891, the City Council of the City of Cleveland passed an ordinance, which was duly accepted by said East Cleveland Railroad Company, granting the right to said company to construct and operate a second or additional track in Central Avenue (formerly Garden Street) from the East Line of Willson Avenue to the right-of-way of the Cleveland and Pittsburg Railroad Company, and to connect said track so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at the Cleveland and Pittsburgh railroad tracks; the said additional track therein provided for covering a distance of about 2400 feet; making the Garden Street line substantially a double-track system; and in and by said ordinance it was provided that the same should be accepted in writing by said railroad company, and that such acceptance should be deemed a contract on the part of said railroad company with said city to perform all and singular the matters and things in said ordinance required to be performed; and in and by said ordinance it was further provided that the right therein granted should be valid until the expiration of the grant of said company's main line. Your orator shows that, by force of this ordinance, which it alleges was duly accepted and has in all respects been complied with by it and its predecessor, the right was in express terms granted to said East Cleveland Railroad Company by the City of Cleveland to lay a double-track upon a portion of Central Avenue (formerly Garden Street) in said ordinance described, to be connected with its existing double track upon said avenue, to be operated as part of said system, and that the right to so operate should continue until the expiration of the grant for said company's main line; and your orator shows, as hereinbefore more specifically set forth, that the grants for the operation of the main line of said company,
191 insofar as they are controlled by ordinance of the city of Cleveland, did not and do not expire until the 13th day of July, 1913.

And your orator shows that said ordinance of March 30th, 1891, in this paragraph set forth, was passed by the city council under the express authority of the statutes of Ohio granting a continuing power to said council to fix the terms and conditions upon which street railways may be constructed, operated and extended; that, as appears by the provisions of said ordinance, the city at that time had in contemplation the paving of the roadway in that portion of Garden Street upon which this additional double-track construction was to be made, and required of the company in said ordinance that it should pave the space between the outer rails of said double-track with the same material and laid in the same manner as contemplated

by the city of Cleveland for the remainder of the roadway; and, in so fixing the terms and conditions upon which said double-track construction should be laid and the road thereafter operated, it was within the express power of the council and germane to the subject-matter upon which it was legislating, among other terms and conditions, to fix a time for the termination of the right to operate the road as so double-tracked under the terms of said ordinance, and that in pursuance of said power and for the purpose of securing for the city the additional paving obligations required of the company in said ordinance, it was provided as hereinbefore set forth, that the said line as so double-tracked might be operated by the company until the expiration of the company's grant for its main line, which, as above set forth, does not expire prior to the 13th day of July, 1913. And your orator shows that, having accepted said ordinance and built or constructed the double-track as therein contemplated and authorized, and put the same in operation as part of its
192 Garden Street lines, the said company did so without prejudice to or in any way impairing the right which it already possessed upon Garden Street as hereinbefore in this bill set forth.

XXII.

On or about April 20th, 1891, the city council of the City of Cleveland passed an ordinance granting to the East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue, and authorizing said company to connect the tracks therein authorized with the tracks then laid upon New Street. Your orator shows that the permission so granted was permission to lay an additional or second track on part of the Garden Street extension of the main line of said company, and granted by the City Council of Cleveland in pursuance of the authority conferred upon it from time to time fix the terms and conditions of street railway operation; and it is in saod ordinance provided that "The right herein granted shall be valid until the expiration of the grants for said company's tracks in said Quincy Street east of Lincoln Avenue, to-wit: July 13, 1913;" whereby your orator shows that the city council, in the granting of permission to lay an additional or second track in Quincy Street, being a portion of the Garden Street extension, expressly provided that the permission then granted should be operative until July 13th, 1913; and your orator shows that the grants for said company's tracks in Quincy Street east of Lincoln Avenue, referred to in said ordinance, were in the first instance made by ordinance of February 9th, 1885, hereinbefore set forth, whereby a grant was made to said East Cleveland Railroad Company to so extend its Garden Street extension east of Lincoln Avenue, and wherein it was provided that said company should equip and operate said extension in connection with said main line, and that such grant should terminate with the grant for the main line; and, as hereinbefore set forth, your orator shows that the grant of said main
193 line did not and does not terminate until July 13, 1913.

XXIII.

On or about July 17th, 1893, the city council of the City of Cleveland passed an ordinance granting to your orator the successor of the East Cleveland Railroad Company, as hereinbefore set forth, permission to extend its double track street railroad from its then present track at the intersection of Erie and Prospect streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines in Ontario Street; also to extend its tracks from the intersection of Seneca and Superior streets along Seneca Street to Lake Street; thence along Lake Street to Ontario Street, and thence along Ontario to the center of Monumental Square, connecting with the then present tracks in Ontario Street; and to construct and maintain such extensions and operate the same by electricity upon the terms and conditions in said ordinance mentioned; and, among other conditions of said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the city council on the 29th day of May, 1893, in reference to the consolidation of the various companies forming your orator, as hereinbefore set forth. And in said ordinance it was also provided that the council should have the right at any time to require the company to operate its cars over the entire length of any of the lines or extensions of said constituent companies, in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies into your orator; that the council might require night cars to be operated the entire length of any of the lines of the company at least hourly each way between midnight and six
194 o'clock A. M. daily; that the company should assume the expense of sprinkling in addition to that then required of it by existing ordinances; and that in consideration of the grant so made by the said council, the company agreed therein that all the terms and provisions of the section relating to additional burdens for sprinkling, etc. should apply to and be a condition of all the grants theretofore made by the council to said constituent companies or any of them; and in and by said ordinance it is provided that the grant therein made shall be in force until the 13th day of July, 1913. And your orator shows that said last mentioned ordinance relates to a portion of the line originally constructed as part of the Garden Street extension of the main line of the east Cleveland Railroad Company, and requires of your orator the operation of all its lines and tracks, including said Garden Street extension, over the lines of track provided for in said ordinance. And your orator further shows that said ordinance so providing for additional tracks was passed by the city council with special reference to the operation of cars upon the Garden Street extension, and that immediately upon the completion and equipment of said tracks for operation, all of the cars operated upon the Garden Street extension were required by the city to be operated upon tracks provided for in said last-mentioned ordinance and, by the terms of said ordinance, as hereinbefore set forth, the obligation to continue such operation and the right of the company so to operate it is provided shall continue until the 13th day of July, 1913.

XXIV.

Your orator further shows that, on February 19th, 1894, the city council of the City of Cleveland, determining it to be to the public interest to have established a cross-town line upon Willson Avenue, duly passed an ordinance entitled:

"An ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson avenue."

which said ordinance was duly accepted by both of the companies therein named.

195 By the terms of said ordinance the said companies were required to build and equip a double-track electric street railway along Willson Avenue from Broadway to the northerly terminus thereof; a portion of said railway to be built by your orator and the other portion of said railway to be built by The Cleveland City Railway Company. And in and by section 5 of said ordinance it was provided that the operation of cars on said railway by The Cleveland City Railway Company and by your orator shall be under the control and regulation of the council; and by section 6 of said ordinance it is provided, in substance, that passengers on any car operated or any part of said Willson Avenue, upon payment of one fare, shall be entitled to be transferred to any other line of either said The Cleveland Electric Railway Company (your orator) or said The Cleveland City Railway Company intersecting or coming to Willson Avenue, and with the additional right to transfer from such second line to a car or any other lines of the company operating the same which crosses the Cuyahoga River, and providing that passengers on any line of either of said companies intersecting or coming to Willson Avenue shall be entitled to transfer to Willson Avenue and have a continuous ride thereon. Section 7 of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each outer rail; also requiring of the companies the widening of the roadway of said Willson Avenue between Euclid and Scovill avenues five feet on each side; which last-mentioned requirements were in addition to existing obligations with respect to paving and widening the street. And in and by section 10 of said Ordinance it is provided that said grant shall be in force until the first day of July, 1914.

And your orator further shows that the grants under which it was operating at the time of the passage of the last-mentioned

196 ordinance, as to some of its lines, expire on the first day of July, 1914, and that the obligations imposed upon your orator by virtue of said ordinance in this paragraph set forth are continuing obligations, requiring of your orator the performance of all and singular the conditions of said ordinance, including the issuing of transfers from its lines and accepting transfers from the Willson Avenue line, up to the first day of July, 1914. And your orator shows that Willson Avenue and the lines of road therein constructed are intersected by the Central Avenue (formerly Garden Street) and Quincy Street tracks constructed under the various ordinances hereinbefore set forth; and your orator submits that the council, as it

might lawfully do, did, by virtue of the ordinance of February 19th, 1894, require of your orator, in the operation of its said Central Avenue and Quincy Street tracks, to give and receive transfers from the Willson Avenue line, and that said Willson Avenue line and said other lines of your orator intersecting Willson Avenue should be so operated that passengers should have free transfers as between the Willson Avenue line and such intersecting lines, thereby subjecting your orator to such requirements; also granting to your orator the right to continue the operation of such entire system up to the first day of July, 1914. And your orator shows that unless it has the continued right to operate its Central Avenue and Quincy Street extensions until the first day of July, 1914, it cannot fulfill the obligations created and imposed nor exercise the right granted by said ordinance of February 19th, 1894; and your orator submits that, by virtue of said ordinance of February 19th, 1894, as respects said Central Avenue lines, the council of the City of Cleveland recognized the fact that your orator's right to operate therein did not expire prior to July 1st, 1914, and that if your orator's rights in such street, independently of the provisions of said ordinance of
197 February 19th, 1894, did expire prior to July 1st, 1914, then, by force of said last-mentioned ordinance and the rights thereby created and the obligations thereby imposed, your orator's right to continue the operation of said Central Avenue lines was lawfully extended to the first day of July, 1914.

XXV.

On June 25th, 1894, the city council of the City of Cleveland passed an ordinance, which was duly accepted and has at all times been complied with by your orator, granting to it the right to extend and operate its double track street railroad in Quincy Street from New Street to Willson Avenue; that the double-track street railroad which your orator was, at the time of the passage of this ordinance, operating in Quincy Street and therein referred to, was part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and had been constructed and operated under the various ordinances hereinbefore ref-rred to; and in and by the provisions of said last mentioned ordinance your orator, as the successor in interest of said East Cleveland Railroad Company and the other companies forming your orator as a consolidated company, was granted permission to extend and operate by electricity its double-track street railroad from its then present tracks in Quincy Street westerly to Willson Avenue connecting by curves with the cross-town line upon Willson avenue as in this bill hereinbefore more particularly described; and in and by said ordinance it was provided that the right therein granted should terminate with the grant for the said company's then present line in Quincy Street; and your orator shows that by reason of the various ordinances and contracts hereinbefore referred to, the grant for said company's then present line in Quincy Street did not and does not expire prior to July 1st, 1914.

198 XXVI.

That prior to the consolidation which forms your orator, the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company, and The South Side Street Railroad Company, were operating independent lines of street railway in the city of Cleveland there being no interchange of traffic between said roads except that the said Brooklyn Street Railroad Company and the South Side Street Railroad Company were required to give and receive transfers to and from each other's lines at certain points; and the public was required, in patronizing any one of said lines and desiring passage on another, to pay an extra fare, with the exception hereinabove stated. And thereupon, on or about the 29th of May, 1893, the council of the City of Cleveland, by legislative enactment, prescribed the terms and conditions upon which said various companies last above named might be consolidated into your orator, and by the terms of such action, the city, through its council consented to such consolidation upon the condition that thereafter all of the lines of said different railroads should be operated by your orator as one system, and that only one fare should be charged for a continuous ride on or over any line of railway formerly owned by any one of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and also upon the condition that passengers or any of such lines paying one fare should be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for such single fare, and requiring that your orator should, within ten days after the adoption of the resolution embodying such terms and conditions, file with the City Clerk in writing an acceptance of the terms and an agreement to perform the same. And thereafter, on or

199 about the same date, your orator in writing, as by said resolution required, duly accepted the terms and conditions prescribed in said resolution and agreed to perform the terms of the same. And since the completion of said consolidation your orator has operated all of the lines which theretofore belong to the constituent companies as one entire system, of which the former lines of The East Cleveland Railroad Company were a part; and in carrying out the terms and conditions so prescribed by said council as a condition precedent to said consolidation, your orator has united all of the lines formerly operated by said various companies in such manner as that many of the original lines, including the lines of track built as the Garden Street extension, have long since lost their identity as distinct lines of your orator's company; and your orator has been operating under the terms of said consolidation ordinance for one fare, and with a system of transfers, continuous lines of through cars over various parts of the system which were, before said consolidation, independent lines of said various railroad companies, and, by virtue of said consolidation, it became and was necessary that your orator, in carrying out the terms and conditions prescribed by the council, should establish such through car lines, and that if it should be deprived of the right to operate that portion of its present

system which was originally an extension of the main line of the East Cleveland Railroad Company upon Garden Street, it would be impracticable for it to carry out its agreement made with the city at the time of the consolidation with respect to the operation of all of its lines as one system, at one fare, and to give continuous rides and transfers thereover.

XXVII.

On or about the first day of July, 1903, your orator acquired by purchase, as hereinbefore set forth, all and singular the railroad, tracks, property, rights and franchises, of The Cleveland City
200 Railway Company, which was then operating various lines of railroad in competition with the lines then operated by your orator; and by virtue of its acquisition of said lines of The Cleveland City Railway Company it has again been required to establish additional through lines and through car service, so that it has resulted, and the situation now is, that by virtue of the statute in such cases made and provided, the tracks which were built upon Garden Street as part of an extension of the main line of the East Cleveland Railroad Company have now become part and parcel of a through system covering all of the street railway tracks in the City of Cleveland, being a total mileage of about 236 miles, and through car service is being given over said entire system, and the said Garden Street extension is not now, and has not been since its acquisition in 1893, treated by your orator or the city council or the public as having any identity separate and distinct from, but is and has been since said consolidation treated as an integral part of, the entire system of roads in operation by your orator, and that were your orator to be now deprived of the right to operate the tracks or any substantial part thereof built upon Garden Street (now Central Avenue) as an extension of the original main line of the East Cleveland Railroad Company, it would be impracticable for it to continue to operate the general system with through cars service and at one fare with transfers, which it is now conducting over such entire system so established as hereinbefore set forth.

XXVIII.

Your orator further shows that, notwithstanding its rights in the premises as hereinbefore set forth and the provisions of its several contracts with the City of Cleveland and in direct violation and impairment of the same, the defendant City of Cleveland, acting under delegated power from the State of Ohio, by action of its common council on the 11th day of January, 1904, without having
201 previously advertised any application for such grant, and without submitting the same in any manner to competitive bidding and without compliance or attempted compliance with the statutes relating to the granting of an original right to construct and operate a street railroad, as distinguished from the grant of a removal of an existing right, passed an ordinance in the words and figures following, to-wit:

202 *Ordinances.*

Ordinance No. 44240.

An ordinance granting to The Forest City Railway Company, its successors and assigns the renewal right to maintain and operate the existing street railroads in the following streets.

Commencing at the intersection of Prospect and Erie streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central avenue to Lincoln avenue; also commencing at the intersection of Quincy street with Willson Avenue in said city, thence westerly on, over and along Quincy Street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expire by limitation at midnight on the 22nd day of March, 1905; and

Whereas the city council of the city of Cleveland, state of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interests; and

Whereas the Forest City Railway Company has presented and made in writing to the city council of the city of Cleveland, state of Ohio, an offer to maintain and operate a street railroad on, over and along the streets, avenues and parts thereof hereinafter described upon terms which are deemed by the council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the council of the City of Cleveland, state of Ohio,
203 deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad on, over and along said streets, avenues and parts thereof, hereinafter described; and,

Whereas, On the 28th day of December 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

Whereas, An application has been presented to this council for renewal for certain street railroad grants and privileges by The Forest City Railway Company, and Ordinance No. 44240 introduced in this Council granting to the said The Forest City Railway Company the privileges asked for in their said application; and

Whereas, Said Ordinance No. 44240 has been referred to the Committee on street railroads, Boards of Public Service, City Solicitor and Mayor; and

Whereas, The chairman of said street Railroad Committee has fixed Thursday, the 31st day of December, 1903, at three o'clock p. m. in Room 108, City Hall, as the time and place of the first meeting to consider said application and ordinance; now, therefore,

Resolved, That the City Clerk be and he is hereby directed to transmit to The Cleveland Electric Railway Company a copy of said application and said ordinance and a copy of this resolution,

together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof, to participate in the deliberations of said committee and to offer any suggestions or propositions that they see fit to make, either to said Committee or to this council.

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did notify The Cleveland, Electric Railway
204 Company of the passage and contents of said resolution, and did receive in reply from The Cleveland Electric Railway Company, the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the 29th inst. addressed to The Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44258 and 44257 adopted by the council December 28th, 1903, and as directed by the Council, extending an invitation to this Company to be present at a meeting of the committee to which said resolutions have been referred, to participate in its deliberations.

We beg to advise the Committee and the City Council that the proposed ordinances to be considered by the committee, which purports to be ordinances to grant to the Forest City Railway Company the right to operate cars over portions of Woodland Avenue and Central Avenue, in which streets this Company is now operating, are ordinances which impair the existing contract right of this company. We are advised that it is not true, in law or in fact, as recited in said ordinances, that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but on the contrary, neither of the franchises under which this Company operates in Woodland Avenue and Central Avenue expire for some years to come. The franchises under which this company is operating in said streets are contracts between it and the City of Cleveland which cannot lawfully be impaired by subsequent ordinances of the city, and upon the faith of these contracts this company has invested large sums of money. The company will not in any way recognize the right of the council to impair its contract rights in the premises.

205 There are various other reasons why this proposed legislation could not be legally passed by the Council, but we deem it sufficient at this time to call your attention to the fact that you cannot impair contract rights in the mehod suggesed by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *President.*

To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company, as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk answering the invitations in resolutions Nos. 44257 and 44258 adopted by the City Council of the City of Cleveland State of Ohio, December 28th 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this company operates in Woodland Avenue and Central Avenue expires for some years to come.

The Committee havi-g ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your company and the City of Cleveland. The Committee has taken a recess until Monday, the 4th inst., ar 4.00 p. m. when they will again meet at room 108 City Hall for further deliberation on this subject.

206 The Committee is advised that the grants which ordinance No. 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd day of March, 1905. Since your claim that the said grants expire at later dates, the Committee hereby requests specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the Committee meeting on Monday afternoon.

The Committee also desires you to have your representatives present at the said meeting to present any views or suggestions that you may have to make upon the subject of the ordinances under consideration.

Very truly yours, CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the Committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of the Cleveland Electric Railway Company, was present and stated that Mr. Andrews, president of said Railway Company, was out of the City and that in his absence no one was authorized to speak for him but no answer was made by said The Cleveland Electric Railway Company to the letter of said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with:

Now therefore, be it ordained by the Council of the City of Cleveland, State of Ohio, that,

207 SECTION 1. The council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway

Company, its successors and assigns, hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles trolley, feed and span wires, appliances, equipments, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue also commencing at the intersection of Quincy Street with Willson Avenue, in said City; thence easterly on, over and along Quincy street to Woodland Hills Avenue.

The rights herein granted in Erie Street are subject to the reserved right of the City of Cleveland to make further grants in said Erie Street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the City of Cleveland may deem just and equitable.

SEC. 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first class, and to the satisfaction of the Board of Public Service.

SEC. 3. The right is hereby granted to said grantee, to erect the necessary poles and wires, and connect the necessary power houses with said street railroad wherever necessary.

SEC. 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by the grantee, if such transfer be necessary to enable him to continue to his destination. The city reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years years of age accompanied by a person paying fare, shall be carried free.

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SEC. 5. The city reserves the right to purchase any street railroad tracks, poles, wires, appliances or equipment owned or used by the grantee on the route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a board of arbitration, consisting of three persons, a majority of whom shall decide all questions.

SEC. 6. In case of arbitration in purchase of said street railroad, the City shall give at least six months' written notice of its intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing, within thirty days thereafter, one arbitrator. The two within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator or on the failure of the two arbitrators to name the third,

the probate judge of Cuyahoga County may name either or both, as the case may be, upon the application of the city. In case of the death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SEC. 7. The value of said street railroad shall be obtained
209 as follows: The cost of reproduction shall be estimated and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street payments to the extent paid for by the grantee.
6. Rolling Stock.
7. Miscellaneous.

To this total valuation of the above items shall be added twenty (20) per cent., but in arriving at the said valuation the franchises and privileges granted by the city shall not be estimated or paid for.

SEC. 8. The City reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

SEC. 9. The City reserves the right to grant to any other party or parties the joint use not to exceed ten per cent. of the length of the route herein described, on such terms as may be fixed by the Council in case the parties do not agree but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SEC. 10. If at the expiration of this franchise no extension or renewal thereof be granted by the City to the then owner, and the City has not itself acquired the property then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right and be under obligation to purchase said railroad under the terms providing for the purchase by the City as herein contained.

210 SEC. 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the City Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, list of names of stockholders, showing their respective holdings in said company and shall be permitted to ascertain from said records and books the actual amount or amounts invested and the amount of capital stock issued the cost of the property, liabilities, assest, profits and losses, income, expenses and costs of the betterments.

SEC. 12. The maintenance and operation of the street railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railway ordinances now in force, except as the same are herein or hereafter modified, and shall be subject to the future ordinances and regulations of the Council.

SEC. 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and described on the 23rd day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona-fide* legal proceedings and other unavoidable delays over which the said grantee, has no control; but any delay or failure of the grantee to begin the operation of said railroad on the 23rd day of March, 1905, due to any legal proceedings or unavoidable cause preventing the same, and over which the grantee has no control, shall not be deemed by the council ground for forfeiture of this grant.

SEC. 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires, and appliances erected in the high-
211 ways along the route herein described, and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent. added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SEC. 15. Whenever in the above ordinance the name of The Forest City Railway Company occurs, or wherever the said The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said The Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SEC. 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SEC. 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by the said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11, 1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor, Jan. 20, 1904.

212 And said The Forest City Railway Company accepted said ordinance and has given out in the public prints and otherwise that it is now the owner of and has the right, beginning on the

22nd day of March, 1905, to operate upon the streets in said ordinance described and which are now occupied by your orator, and to oust your orator from the possession thereof as in said ordinance provided; and, acting in pursuance of the terms of said last mentioned ordinance, the said The Forest City Raiway Company has made demand upon your orator to agree with it as to the value of the tracks, wires, poles and other appliances now owned by your orator in said streets, to the end that the same may be purchased by The Forest City Railway Company as in said ordinance provided; and your orator having declined to recognize in any manner the validity of said ordinance or to negotiate with reference to the value of its property as therein provided, The Forest City Railway Company has made formal application to the city council for the assistance of the City authorities in compelling your orator to abide by the provisions of said illegal ordinance. And in and by said formal application said The Forest City Railway Company has asked the city to proceed at the earliest practicable moment to adopt such proceedings as may be necessary to deliver possession to said The Forest City Railway Company of the streets and highways described in said ordinance and which are now occupied by your orator, as of right, as in this bill set forth, it is entitled to occupy them until the first day of July, 1914.

XXIX.

Your orator shows that said ordinance of January 11th, 1904, by which it is so sought to oust your orator from the right to continue the operation of its system of railroads upon the streets in said ordinance described, is void, because contrary to and in violation of the Constitution of the United States, in this,—that said ordinance is a law of the State of Ohio in direct violation and con-
213 travention and impairment of the contract obligations existing between your orator and the former Village of East Cleveland and the said defendant City of Cleveland, as in this amended bill hereinbefore set forth, and impairs the contract rights of your orator in this,—that whereas, your orator is entitled, by virtue of its said contracts in this bill set forth with the Village of East Cleveland and said City of Cleveland, to maintain and operate its said railway in all of the streets in said ordinance of January 11th, 1904, described, its rights, as respects no one of said streets expiring prior to July 1, 1914, the provisions of said ordinance oust your orator from the occupation of said streets and attempt to require the turning over of its property to said The Forest City Railway Company on or before the 22nd day of March, 1905.

And said ordinance of January 11th, 1904, is, as your orator submits, a law of the State of Ohio taking from the complainant its property without due process of law, in this, to-wit: That it is in said ordinance provided that the said defendant, The Forest City Railway Company, shall, unless your orator will sell to it its property upon an agreed valuation, take possession of all and singular its property used in the operation of its said road in the streets in said ordinance described, without any judicial process and without payment of any compensation to your orator therefor, and requires

of your orator the surrender and transfer of its property to said The Forest City Railway Company without compensation unless thereafter your orator, by judicial proceeding, is successful in recovering compensation for the value of the property which by said law of the State of Ohio the said The Forest City Railway Company is authorized to seize and take from the possession of your orator without its consent.

Your orator further shows that the passage of said ordinance of January 11th, 1904, is in furtherance of a combination and conspiracy between said defendant, The Forest City Railway
214 Company, and the municipal authorities of the City of Cleveland, for the avowed purpose, as frequently given out in the public prints by the municipal authorities, of depriving your orator of the right to operate in the streets in said ordinance described unless it shall submit to unreasonable requirements as to rates of fare with reference to its other lines of railway in the City of Cleveland, and with respect to other lines in regard to which it is not even claimed by the defendant city that its rights have terminated or will terminate in the near future; and your orator alleges that, unless restrained by the order of this Court, said The Forest City Railway Company and said City of Cleveland will proceed in accordance with the provisions of said ordinance, to compel your orator to transfer and surrender all and singular its property used in the operation of said roads in the streets in said ordinance described to said The Forest City Railway Company, and the abond-nment by your orator of the operation of its lines of street railroad in and upon the streets in said ordinance described; thereby depriving your orator of its property without due process of law and depriving it of the benefit of its existing contract rights, destroying the unity of its system and making it impossible to carry out the other existing contracts between it and the City with reference to carrying passengers upon the different lines of railway operated by it and established by the City of Cleveland; that the passage of said illegal ordinance and the contemplated and threatened enforcement of the same have created a cloud upon your orator's title to the right to operate its railways in the City of Cleveland, and have seriously impaired the market value of the obligations of your orator, both stock and bonds, now distributed and outstanding among hundreds of investors; that before it could at law demonstrate the invalidity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble would arise over your orator's refusal to recognize the validity of said ordinance; that said ordinance having already by its terms gone into effect, and requiring your orator to take action looking to the fixing of a price upon its property and the turning over of the same to the defendant The Forest City Railway Company, your
215 orator will be compelled to submit to said ordinance or run the risk of the City of Cleveland, by its police force, taking possession of said property and ousting your orator from said streets; and, as your orator is informed and believes and alleges, it is the intention of the city authorities to enforce the terms of said ordinance and put The Forest City Railway Company in possession of said streets and of your orator's property, and oust your orator

therefrom, by physical force if necessary, unless it shall submit to the terms of said illegal ordinance.

Your orator submits that it is without adequate remedy at law in the premises, there being no proceeding known to the law by which your orator can, with safety to its investments and the continued and uninterrupted service to the public over its system of railways, and with reasonable promptness, determine the proper construction of the terms of all the contracts hereinbefore in this bill set forth and established the right, which it here asserts, to continue the operation of said lines until the right so to do is terminated as to this amended bill set forth; that only in a court of equity can the rights of your orator, and with justice to it and the public and with reasonable promptness, be adequately adjudicated; that the cloud existing upon your orator's title is a continuing and irreparable and serious damage to it in the management of its property; that the threat of the City of Cleveland to oust it from the said important and integral part of its system on the 22nd day of March, 1905, is a menace to its investment which not only in large measure destroys the value of its securities your orator with reference to future plans as to the operation of its property by way of improvement and
216 equipment, all of which are contemplated by your orator upon the faith of the validity of the right which it in this bill asserts to the continued operation of said lines of railway, and your orator submits that it has no adequate remedy at law against the enforcement of said ordinance.

In consideration whereof, and inasmuch as your orator is without adequate remedy at law in the premises, and can have adequate relief only in a court of equity,—to the end, therefore, that the defendants herein may answer the several matters hereinbefore set forth, and that this Court may decree that said ordinance of said defendant city entitled:

"Ordinance No. 42240.

An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:"

passed January 11th, 1904, is null and void and of no effect as respects your orator,—

Your orator prays, that the City of Cleveland, the Mayor and Common Council of said City, and all officers, agents, attorneys, representatives, and departments of said City, and their respective agents, representatives and employés, and the City Solicitor of said City and his associates, assistants and agents, and the irrespective successors in office, and said The Forest City Railway Company, and its officers, agents, servants and employees, be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect;

And from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding against your orator, the object or purpose of which no relief sought by said action being to put

said alleged ordinance into effect or to enforce any of its
217 provisions, or to compel your orator to cease the operation of its existing lines of road upon the streets in said ordinance mentioned or any of them;

And from in any manner interfering, directly or indirectly, with the continued and peaceable occupany by your orator of the streets in said ordinance mentioned, for the operation of its lines of street railway therein as now conducted.

And that, upon final hearing, said ordinance may be by decree of this court adjudged to be null and void.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland and the Mayor and Common Council, and all officers, agents, employés, representatives, and departments of said City, and said The Forest City Railway Company and its officers, agents, servants and employees, and each of them, be enjoined and restrained as hereinbefore prayed.

And that your orator may have such other and further relief as the nature of the case may require and as to the equity may appertain.

May it please your Honors to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this Honorable Court, directed to the defendants, the City of Cleveland and The Forest City Railway Company commanding said defendants to appear in this Court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

218 THE STATE OF OHIO, *Cuyahoga County, ss:*

C. F. Emery, being duly sworn, says that he is Vice-President of The Cleveland Electric Railway Company, the complainant in the aforegoing amended bill of complaint; that he makes this affidavit as such officer on behalf of said Company; that he has read the said amended bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters and things therein stated to be upon information and belief, and, as to such matters and things, he believes them to be true.

C. F. EMERY.

Sworn to and subscribed before me this 3rd day of October 1905.

CHARLES C. OWENS,
[SEAL.] *Notary Public.*

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* City of Cleveland and The Forest City Railway Company, Defendant. Amended bill of complaint. Filed Oct. 3, 1905. Irving Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

219 (*Answer.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the City of Cleveland, one of the Defendants in the above entitled cause, to the Amended Bill of Complaint of The Cleveland Electric Railway Company, filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio.

This defendant, now and at all times hereafter reserving to itself the benefit of all rights of demurrer and of objection to the amended bill filed herein for the many errors and insufficiencies therein, for answer thereto, and to so much thereof as this defendant is advised it is material and necessary for it to answer, answering says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland, in the said State; that this defendant is a municipal corporation under the laws of the State of Ohio, and that the Forest City Railway Company is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in the said City of Cleveland.

II.

This defendant admits that this is a civil action and that the amount in controversy, exclusive of interest and costs, exceeds the sum of Five Thousand Dollars ($5000.00), but denies that this is a controversy arising under the constitution and laws of the
220 United States or that the complainant seeks relief against this defendant or The Forest City Railway Company by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant, or depriving it of any of its property without due process of law in violation of any article of the constitution of the United States.

III.

This defendant admits that Garden Street and Ohio Street, as referred to in the several ordinances mentioned and pleaded in the

complainant's amended bill, and otherwise referred to therein, were subsequently united under one name and designated Central Avenue, by which name the said former Garden Street and Ohio Street are now known.

IV.

This defendant admits that the complainant is a consolidated company, organized in the year 1893, and that it was formed by the consolidation of certain constituent companies which, at the time and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof, as provided by law, the complainant became and is possessed of all the rights, franchises, privileges and property possessed by said constituent companies. But this defendant avers that the said consolidated company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of the said constituent companies, and of the franchises granted to said constituent companies, and each of them, by the Council of the City of Cleveland. This defendant also admits that the constituent companies, and the lines owned and operated by them which were acquired by the complainant by virtue of such consolidation, are substantially as set forth in paragraph IV of its amended bill, but this defendant denies that each of said constituent companies was operating under grants from this de-
221 fendant, no one of which will expire before the 1st day of July, 1914.

V.

This defendant denies that the complainant is the owner by purchase made on or about the 1st day of July, 1903, of all the lines of railway, rights and franchises then owned by The Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of the Woodland Avenue and West Side Street Railway Company and the Cleveland City Cable Railway Company; that at the time of such consolidation, which this defendant avers was the 11th day of May, 1893, the said the Woodland Avenue and West Side Street Railway Company was operating lines of railway described generally as the Woodland Avenue and West Side line, and that the Cleveland City Cable Railway Company was operating lines from the Public Square at Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said the Cleveland City Cable Railway Company was operating expired before July, 1914.

This defendant denies each and every other allegation or inference of fact or law set forth in paragraph V of the complainant's amended bill.

VI.

This defendant admits that the total mileage of single track which is operated by the complainant, as the successor in interest of all the

various constituent companies mentioned and described in the fourth and fifth paragraphs of its amended bill, is about two hundred and thirty-six miles, and that the mileage of lines described in the ordinance of the Council of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to the defendant, The Forest City Railway Company, and set forth in paragraph XVIII of the complainant's amended bill, is about twelve miles.

VII.

222 This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's amended bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by the East Cleveland Railroad Company, a corporation incorporated some time during the year 1859, under the incorporation law then existing in the State of Ohio known as the act of May 1, 1852, and that on the 1st day of November, 1859, and the 3rd day of July, 1860, and the 15th day of April, 1862, there were passed by the Council of the City of Cleveland certain ordinances or resolutions which were duly accepted by said company granting permission for the construction, maintenance and operation of a line of railway beginning at the easterly city limits at Willson Avenue, thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street and Euclid Avenue to and around the southerly and westerly sides of the Public Square to and in Superior Street, and through Superior Street to Water Street; and this defendant says that at the time each of said ordinances and resolutions were passed, there was in existence and in force, a general ordinance of this defendant subject to which said grants of permission were made, entitled:

"An ordinance prescribing the terms and conditions of Street passenger railways within the City of Cleveland"

duly and legally adopted on the 20th day of September, 1859, by the Council of this defendant, and that Section 13 thereof was as follows:

"No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance."

And this defendant further says that the resolution or ordi-
223 nance aforesaid, passed on November 1, 1859, and accepted by said company, provided as follows:

"Whereas, The East Cleveland Railroad Company in compliance with the provisions of an ordinance of the City of Cleveland, passed September 20th, 1859, entitled 'An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland,' has obtained the requisite consent of the property owners and holders to lay their track on Prospect Street from its intersection with Erie Street to the Eastern terminus of said street, and from

the intersection of Euclid Street and Willson Avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect Street upon the line indicated by said company in the published notice hereto attached; therefore,

Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of January, 1861, and this the license of said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of September, 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this, their license shall cease. (Adopted Nov. 1st, 1859)."

And this defendant further says that the resolution aforesaid, passed July 3, 1860, provided as follows:

"Resolved that the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turnouts from said Prospect Street in said City, commencing at its intersection with Erie Street, thence on and along Erie Street to Superior Street, thence on and along Superior Street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior Street, subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland Railroad Company, to use and occupy streets in said City, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860."

And this defendant further says that the resolution aforesaid passed on the 15th day of April, 1862, contained in a similar provision making the same subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways passed September 20, 1859, and was limited by the terms thereof to expire on the 20th day of September, 1879.

224 This defendant admits that under the several resolutions or grants as aforesaid, the lines of street railroad therein authorized were afterwards constructed, but this defendant denies each and every other allegation and inference of fact or law set forth in paragraph VIII of the complainant's amended bill not herein specifically admitted to be true.

IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in the complainant's amended

bill, the trustees of East Cleveland Township passed a resolution and also an ordinance granting permission to said company to construct and operate a street railroad in Euclid Avenue easterly from the intersection of Willson Avenue to Doan's Corners, now the corner of Euclid Avenue and Fairmount Street, and that under said grant the line of railways therein authorized was thereafter constructed and put in operation as an extension of the line previously constructed by said company under authority of the ordinances and resolutions mentioned and described in paragraph VIII of the complainant's amended bill, and this defendant admits that the territory between Willson Avenue and Doan's Corners was annexed to and became a part of this defendant city in the year 1892.

This defendant denies each and every allegation and inference of fact or law except as herein admitted to be true — set forth in paragraph IX of the complainant's amended bill.

X.

This defendant admits that after the said the East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances and resolutions set forth in paragraphs VIII and IX of complainant's amended bill, the Council of this defendant, on or about the 14th day of January, 1868, passed
225 an ordinance granting consent and leave to the said the East Cleveland Railroad Company to construct and operate a line of street railway

"from the intersection of Prospect and Brownell Street to connect with the main line of its railroad; thence along the center of said Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the eastern boundary of said city;"

that said permission was given for a period of twenty years from and after the date of the passage of said ordinance, expiring January 14, 1888, and that the right during said period of twenty years from the date of said ordinance was also given

"to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance its Council granted permission to the East Cleveland Railroad Company to construct said line of railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary avers that the grant was made after obtaining the consent in writing of the majority of the property owners and after advertising notice of application as required by statute, and to the person who would agree to carry passengers at the lowest rate of fare as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true as set forth in paragraph X of complainant's amended bill.

XI.

This defendant further admits that after the construction of the street railway in Garden Street, pursuant to the ordinance described in paragraph X of the complainant's amended bill, the Council of the Village of East Cleveland, which adjoined this defendant
226 on the east and is now a part of this defendant city, granted permission to the said the East Cleveland Railroad Company

"to construct, use and operate a street railroad as a branch of its railroad through and along the following streets in said village, to-wit: Beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson Avenue, running thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly on said center line to the southerly line of Baden Street,"

which grant was accepted by said company and the line thereby authorized was constructed and put in operation.

And this defendant avers that the resolution and preamble of the ordinance making such grant of permission provided as follows:

"Resolved by the Village Council of the Village of East Cleveland that the right is granted and the consent of the Village of East Cleveland is hereby given to The East Cleveland Street Railroad Company to construct a street railroad in the center of Baden Street commencing at the city line of the City of Cleveland on Willson Avenue running easterly to the center of Baden Street; thence southerly in the center of Baden Street to the southerly line of Wade Street with the necessary turnouts and switches and to operate the same for a period of twenty years from its completion, said construction to be commenced and completed within a period of five years from this date."

And this defendant avers that at the time said ordinance was passed, municipal corporations of the State of Ohio had authority in granting permission to street railway companies chartered by the State, to construct, maintain and operate lines of railway, to agree with said companies upon the terms and conditions upon which such grants of permission should be made, by reason whereof the period fixed for the expiration of said grant of permission in all of said ordinances and resolutions referred to in this answer are valid and binding upon the company to which the same were made.

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, as set forth in paragraph XI of complainant's amended bill.

XII.

This defendant is not advised as to the agreement or *or*
227 the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 2, 1870, described in paragraph XII of the complainant's amended bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of this defendant passed a resolution which was duly accepted by said Company whereby permission was granted to The East Cleveland Railroad Company

"to lay a double track street railroad in Ohio Street from their present track in Brownell Street to Erie Street, and in Erie Street from Ohio Street to Prospect Street to connect with the main track at this point;"

that as one of the conditions of said grant of permission it was provided:

"that said Company shall on completion of said tracks in Erie Street and Ohio Street to take up and remove the present track in Brownell Street from the main track in Prospect Street to Ohio Sreet, and shall put that portion of Brownell Street so abandoned in as good condition as it was when first occupied by them;"

and that the said East Cleveland Railroad Company, by virtue of said authority did construct a double track street railroad as therein provided as an extension of the tracks of its Garden Street branch and on the completion thereof did take up and remove the existing track in Brownell Street between Prospect and Ohio Streets.

And this defendant avers that said resolution of March 27, 1873, also contained the following provision:

"5. All ordinances of the City now in force or that may hereafter be enacted for the government and regulation of street railroads shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks."

And that as already set forth, Section XIII of the General Ordinances of this defendant, passed September 20, 1859, then in force and effect, relating to passenger street railways provided that no contract under the provisions of said ordinance shall be made
228 for a longer period than twenty years from the date of the passage of that ordinance.

This defendant denies each and every other allegation and inference of fact and law not herein expressly admitted to be true as set forth in paragraph XIII of complainant's amended bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of this defendant and accepted by The East Cleveland Railroad Company by which said Company was

"authorized and empowered to extend the Garden Street branch of its road to the easterly end thereof along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track in connection with said branch and its main line; but with the express condition that no in-

crease of fare shall be charged by said company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XIV of the complainant's amended bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of this defendant passed another ordinance entitled,

"An Ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;"

that said ordinance recited that it was passed by authority of an act of the legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879; and the said ordinance authorized the East Cleveland Railroad Com-
229 pany,

"to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue;"

and that the right thereby given, it was further provided, should "be and remain in force for the full period of twenty--five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself.

And this defendant further says that on the 4th day of April, 1883, Council of this defendant passed another ordinance, entitled,

"An Ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street."

That by Section 1 of said ordinance, the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street, and upon the terms and conditions expressed in said ordinance; that among the terms and conditions expressed therein was one which provided that the right to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits, shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said company's lines lying west of Willson Avenue.

230 And this defendant avers that the ordinance herein referred to passed on September 15, 1879, and that passed on the 4th day of April, 1883, were passed pursuant to the authority of an act of the legislature of the State of Ohio passed June 13, 1879, which, among other things, provided:

"and any cities of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests." (76 O. L. 157.)

That both of said renewal ordinances were made upon terms and conditions mutually agreed upon and considered by the Council of this defendant conducive to public interest, and were accepted by said Company. By reason whereof, this defendant avers that a new contract for the entire lines of street railway covered thereby was made between the parties which supersedes the antecedent contracts and grants, and measures and determines the respective rights and interests of the parties.

And this defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XV of complainant's amended bill.

XVI.

This defendant further admits that on or about the 22nd day of March, 1880, another ordinance was passed by the Council of this defendant and accepted by said company; that it authorized and empowered The East Cleveland Railroad Company

"to extend the Garden Street branch of its railway from the present track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and around said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for a period of twenty-five years from and after the passage of this ordinance."

And this defendant avers that the territory covered by this extension lies east of the line authorized by the resolution or ordinance of the Council of East Cleveland passed on or about the 30th day of March, 1868, and set forth and referred to in paragraph XI of the complainant's amended bill and of this answer, and that the

231 line of street railway authorized by said last mentioned resolution or ordinance of the Village of East Cleveland is included in and a part of the Garden Street branch of the

railway of The East Cleveland Railroad Company, the right to operate which, together with the residue of said Garden Street branch is, by the ordinance passed on the 22nd of March, 1860, renewed for a term of twenty-five years, all expiring on the 22nd day of March, 1905, and that said ordinance of March 22, 1880, was passed upon a good and sufficient consideration for the surrender and release of any rights and privileges previously owned by said company, and was made pursuant to the authority of the act of the legislature of the State of Ohio passed on the 12th of June, 1879, already cited; and that said railroad company accepted said ordinance of March 22, 1880, and availed itself of the benefits of the extension of tracks thereby authorized covering a distance of two or three additional miles; by reason whereof this defendant avers that the ordinance of March 22, 1880, became and is a valid and subsisting contract between this defendant and The East Cleveland Railroad Company whereby all antecedent rights of either party were merged and extinguished, and their rights thereafter are to be measurd and determined by said ordinance.

And this defendant avers that afterwards, to-wit, at the January term, 1891, of the Circuit Court of Cuyahoga County, that being the county within which the City of Cleveland is situated, a suit in *quo warranto* was instituted in the name of the State of Ohio at the relation of Hadden *vs.* the said The East Cleveland Railroad Company for the purpose of ousting the said The East Cleveland Railroad Company from the exercise of its rights and franchises on the lines of Streets covered by the ordinance of the 22nd of March, 1880; and it was therein adjudged and held by the Court that the passage of the ordinance of March 22, 1880, and the acceptance thereof by the said The East Cleveland Railroad Company was a surrender
232 by said company of all rights and franchises previously held by said company on said streets as of said date, and the making by the City of a renewal grant as of that date for said entire line of street railway for a term of twenty-five years; wherefore, this defendant says that the question of the expiration of all grants for said Garden Street branch made previous to the 22nd day of March, 1880, is *res adjudicata.* (State *vs.* East Cleveland Railroad Company, 6 C. C. 318. Affirmed by Supreme Court, 27 W. L. B. 64.)

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVI of complainant's amended bill.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of this defendant passed another ordinance which was accepted by said company entitled:

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway;"

that it, by said ordinance, authorized and empowered The East Cleveland Railroad Company to extend

"the Garden Street branch of its railway from the termination of

its present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue and equip and operate said extension as a single track railroad with all necessary switches, turn-outs and turntables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden Street branch, and that the words "its main line" mean that line of street railway owned by The East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complainant's amended bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the
233 grant for said main line was — the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy Street east of Lincoln Avenue were limited to expire.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVII of the complainant's amended bill.

XVIII.

This defendant admits that on or about June 17, 1887, its Council passed another ordinance entitled:

"An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway;"

that said ordinance was duly accepted by said Company; that it authorized and empowered said Company

"to extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue upon Garden Street in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street maine line."

This defendant avers that the Garden Street main line within the meaning of the language of the ordinance as quoted above is the Garden Street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of this defendant passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden Street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XVIII of the complainant's amended bill.

XIX.

This defendant admits that on or about July 13, 1888, its
234 Council passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its lines from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to this defendant by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said company

"that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid Avenue from Willson Avenue to the City limits, and on Cedar Avenue from The Cleveland and Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount Street;"

and permission was asked for "the right to substitute electric power on the routes above mentioned; that the ordinance passed in pursuance thereof is entitled:

"An ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar Avenues;"

that said ordinance recites the communication from the street railroad company already set forth, and granted permission to said company

"to propel and operate the cars upon the following named streets in said city, to-wit, Euclid Avenue from Willson Avenue easterly to the city limits, Cedar Avenue from a point near The Cleveland and Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount Street;"

that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided,

"is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines;"

and it was further provided by Section VIII thereof that whenever the Counsel

"shall so require, the said company shall use the same system as herein provided on the entire length of their main and Cedar Avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions
235 of its main line of its Cedar Avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th day of May, 1889, the Council of this defendant passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required

as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's amended bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XIX of the complainant's amended bill.

XX.

This defendant admits that on or about March 10, 1890, its Council passed another ordinance which was accepted by said company authorizing it to substitute electrical motive power for horse power upon the Garden Street branch of its railway; that said ordinance is entitled:

"An ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;"

that said ordinance authorized said company

"to operate its Garden Street branch by electricity, *i. e.*, from the intersection of Prospect Street and Erie Street, along Erie Street to Ohio Street; along Ohio Street to Brownell Street; along Brownell Street to Garden Street; and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street and along Quincy Street to Woodland Hills Avenue."

236 And the right thereby given to erect and maintain on said streets poles and wires and the necessary appliances and fixtures for the purpose of operating and to operate electric motive power, it was expressly provided by said ordinance, should only continue

"during the term of its present grant for said Garden Street;"

which grant, the defendant avers, terminated the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XX of complainant's amended bill.

XXI.

This defendant admits that on or about the 30th day of March, 1891, its Council passed another ordinance which was duly accepted by said The East Cleveland Railroad Company granting the right to said company to construct and operate a second or additional track upon Central Avenue (formerly known as Garden Street) from the east line of Willson Avenue to the right of way of The Cleveland

and Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at The Cleveland and Pittsburg Railroad track; that said ordinance provided that it should be accepted by said company in writing and that such acceptance should be deemed a contract on the part of the said company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided,

"the right herein granted shall be valid until the expiration of the grants for the said company's main line."

This defendant admits that said ordinance was accepted in writing by said company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

237 This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden Street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid Avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's amended bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's amended bill and of this answer, then this defendant avers that it was not within the power of the Council in extending the track of the Garden Street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXX of the complainant's amended bill.

XXII.

This defendant admits that on or about April 20, 1891, its council passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue and authorized said Company to connect said tracks with the tracks now laid upon New Street.

This defendant admits that said ordinance contained a provision as follows:

"The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913."

238 But this defendant avers that the grants for said company's tracks on said Quincy Street east of Lincoln Avenue are

contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's amended bill and of this answer, and by the terms of which the rights thereby granted expired either on the 22nd day of March, 1905, or on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said company s tracks on Quincy Street east of Lincoln Avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXII of the complainant's amended bill.

XXIII.

This defendant admits that on or about the 17th day of July, 1893, its Council passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect Street from Erie to Ontario Street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca Streets; thence along Seneca Street to Lake Street; and thence along Lake Street to Ontario Street; and thence along Ontario Street to the center of Monumental Park connecting with the present tracks in Ontario Street; and also to construct and operate the same by electricity and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the City Council of this defendant, on the 29th day of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply and be a condition on each and all the grants made by the Council to said constituent companies or either of them.

239

This defendant admits that by said ordinance the company was required to sprinkle between the outer rails of its tracks including the space commonly known as the "devil's strip" on all street and street intersections wherein any tracks on any of the lines of said company are laid in a manner satisfactory to the Director of Public Works of this defendant; but this defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's amended bill, and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double track street railroad had been originally constructed as a part of the Garden Street railway or branch and denies also that said ordinance was passed with specific reference to the running of cars operated upon the completion and equipment of said tracks for operation, the Council of said City required all cars operated upon said Garden Street branch to be operated upon the tracks provided for by said ordinance.

240 This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIII of the complainant's amended bill.

XXIV.

This defendant further admits that on February 19, 1894, its council passed an ordinance entitled:

"An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson Avenue."

and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson Avenue from its present tracks at the intersection of Scovill and Willson Avenues to its present tracks at the intersection of Perkins and Willson Avenues, and from its present tracks, at the intersection of Hough and Willson Avenues to the Northerly terminus of said Willson Avenues; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson Avenue from its present tracks at the intersection of Woodland and Willson Avenues to its present tracks at the intersection of Lexington and Willson Avenues, and from its present tracks at the intersection of Payne and Willson Avenues to the northerly terminus of said Willson avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson Avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson Avenue by The Cleveland City Railway

241 Company and the complainant should be under control and regulation of the council, and that Section VI of said ordinance provides as follows:

"A passenger on any car operated on any part of said Willson Avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on

any other line of the company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled without additional or extra charge, to be transferred to said Willson Avenue line to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and one foot outside of each rail on said Willson Avenue, and that the two companies were required to widen the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIV of the complainant's amended bill.

XXV.

This defendant admits that or or about June 25, 1894, its Council passed an ordinance which was duly accepted by said company granting to the complainant the right to extend and operate its double track street railway, which, at the time of the passage of said ordinance, was being operated in Quincy Street and is therein referred to, was the Garden Street branch of the East Cleveland Railroad Company; and which had been constructed and op-
242 erated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate with the grant for said company's present line in Quincy Street, the date for the expiration of which is fixed by the ordinance as set forth in Paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXV. of the complainant's amended bill.

XXVI.

This defendant admits that on the 29th day of May, 1893, its Council passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway and Newburg Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the Complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland:

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of The

East Cleveland Railway Company and the Broadway and Newburg Street Railway Company. Subsequently, it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question *deems* to have arisen as to the intention of the Cleveland Electric Railway Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which end each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East
243 Side line to any south or West Side line, and from any South Side line of the Company to any East Side Line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodation by reason of such consolidations.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *Vice-President.*

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway and Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions;

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other or said constituent companies and any line of any other of said constituent companies within the limits of the City of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk in writing, an acceptance of the terms and conditions herein and agreement to perform the same; otherwise this resolution shall be null and void."

244 This defendant admits that after the passage of said resolution, complainant accepted the same in writing, but denies

that the force and effect of such consolidation or of any of the other resolutions or ordinances pleaded in said amended bill or of any of the laws of the State of Ohio relating thereto is to confer upon the complainant the right to operate its system of street railways as an entire system granted to the complainant or any of its constituent companies at the time fixed by the ordinances and resolutions granting the same or that the force and effect thereof or of any ordinance authorizing an extension of track to be operated in connection with an existing line has the force and effect of extending the date for the expiration of any of the franchises of any of the constituent companies to the date of the last expiring franchise of any one of the companies going to make up said consolidated company or to any other or different date than that fixed in the ordinances granting the franchise.

And this defendant avers as to all of the alleged extensions of time for the expiration of said franchises whether asserted by reason of consolidations or extensions of track or the imposition of transfer privileges and other burdens that it is not competent for the Council of this defendant to extend thereby the date for the expiration of the franchise or to grant an extension of track to expire at a different date from that of the franchise under which the track was laid which is being extended.

And this defendant avers that afterwards, to-wit: on the 5th day of August, 1901, the Council of this defendant passed an ordinance granting to the complainant the right to extend and operate a single track street railroad from Euclid Avenue along the easterly side of the Public Square to Superior Street, and to connect the same with its existing tracks, which grant it was provided should expire on the 22nd day of March, 1905, unless it be sooner terminated
245 by the City, which grant was accepted by said company.

And this defendant further avers that afterwards, to-wit: on the 26th day of June, 1902, the Council of the City of Cleveland granted to the complainant the right to extend its double track street railroad on Erie Street from Euclid Avenue to St. Clair Street, and from Scovill Avenue to Woodland Avenue, and to connect such extension with the existing tracks of said complainant, which grant it is provided shall expire on the 22nd day of March, 1905, and which grant was accepted by said company.

This defendant denies each and every allegation and inference of fact and law not herein expressly admitted to be true, set forth in paragraph XXVI of the complainant's amended bill.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation and inference of fact or law contained in paragraph XXVII of the complainant's amended bill not herein expressly admitted to be true.

This defendant admits that its counsel on the 11th day of January, 1904, passed an ordinance, No. 44240, in the words and

figures as set forth in paragraph XXVIII of complainant's amended bill; that the defendant, The Forest City Railway Company, has accepted said ordinance and that it claims that it is now the owner of and has the right, beginning from the 22nd day of March, 1905, to operate and maintain upon the streets described in said ordinance which are now occupied by the complainant, a street railway and to oust the complainant from the possession of said streets after the 22nd day of March; also that acting in pursuance of the terms of said ordinance, the said The Forest City Railway Company
246 made an effort to agree with the complainant as to the value of the tracks, wires, poles and other appliances in said streets to the end that said defendant might buy and pay for the same as provided for in said ordinance; also that the complainant has declined to negotiate with reference to the value of said property as therein described, or to vacate the streets on or after the 22nd day of March, 1905.

This defendant admits that after the failure and refusal of said complainant to negotiate with reference to the value of said property, a request was made of the City of Cleveland, by said The Forest City Railway Company, which is in the language as follows:

"The undersigned respectfully asks that the City of Cleveland proceed at the earliest practicable moment to have the value of said track, poles, wires and appliances erected in the highways along the route described in said ordinance adjudicated by a court of competent jurisdiction, and also to adopt such proceedings as may be necessary to deliver possession to the undersigned of the streets and highways described in said ordinance." (Signed by The Forest City Railway Company, M. A. Fanning.)

And this defendant further avers that after the receipt of said request, its Council adopted a resolution which is as follows:

"Resolved, that the communication of The Forest City Railway Company be referred to the City Solicitor to investigate the rights and powers of the City of Cleveland in the premises and with power to institute or cause to be instituted such proceedings, if any, as he may deem advisable to have adjudicated the value of the property described in Section XIV of Ordinance 44244, and to compel The Cleveland Electric Railway Company to surrender possession after March 22, 1905, of the streets and highways included in the street railway routes described in said ordinance."

247 And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVIII of complainant's amended bill.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the state of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until January 1, 1914, or to any date subsequent to the 22nd day of March, 1905.

And this defendant further denies that said ordinance is void in that it is an attempt to deprive the complainant of its property or any part thereof without due process of law; and this defendant denies that said ordinance authorized, or that the defendant, The Forest City Railway Company has or ever had any intention to take possession of all of any of the property used by the complainant in the operation of street railway in the streets in said ordinance described except by agreement with and purchase from said complainant, or after the right so to do, and the compensation to be paid therefor had been ascertained and determined by a court of competent jurisdiction, and paid by said defendant.

This defendant denies that the passage of said ordinance of January 11th, 1904, is on the part of this defendant in furtherance of any action or conspiracy between the authorities of this defendant and The Forest City Railway Company, or any one else, for the purpose of depriving the complainant of its right to operate in the streets described in said ordinance unless it will submit to unreason-
248 able requirements as to its rates of fare on its other lines of railway in this defendant city, but this defendant avers that the defendant, The Forest City Railway Company applied for and obtained said ordinance in good faith, and that this defendant, The City of Cleveland, in due conformity to all the provisions and requirements of law, did make and pass said ordinance in good faith to protect the public interests of this defendant and the inhabitants thereof, to bring about a substantial reduction in the rates of fare charged for services rendered by the operation of the street railway upon the streets in said ordinance recited, and upon other terms and conditions in said ordinance appearing, considered by the Council of this defendant conducive to the public interest.

And this defendant admits that it is its intention to enforce the terms of said ordinance and to put the defendant, The Forest City Railway Company in possession of said streets, and to oust the complainant therefrom, and to enforce against the defendant, The Forest City Railway Company a full compliance with all the obligations undertaken by it to be performed by the acceptance of said ordinance, and will require the said The Forest City Railway Company to maintain and operate the lines of street railway required therein to carry passengers at the rates of fare therein prescribed, and to carry out all and singular the other provisions, stipulations, agreements, obligations and covenants of said ordinance; but this defendant denies that by so doing it will deprive the complainant of the benefit of any existing contract rights, or that it will impair any contract existing between it and the complainant or that make it impossible for the complainant to carry out other existing contracts with this defendant according to the true tenor, intent and effect
249 thereof.

This defendant further denies that before the complainant could at law contest the validity of the said ordinance a multiplicity of suits would ensue, or that great inconvenience and conflict and trouble would arise from complainant's refusal to recognize the validity of said ordinance, or that any of the property would be taken

without due process of law, or that by reason of anything alleged in the complainant's amended bill it is without adequate remedy at law.

This defendant denies all the allegations and inferences of fact and law contained in paragraph XXIX of complainant's amended bill not herein expressly admitted to be true.

And having fully answered the amended bill of complaint filed against it herein, this defendant prays to be dismissed hence with its reasonable costs in this behalf expended.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER,
Its Attorneys.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker being first duly sworn, deposes and says that he is the duly elected and qualified City Solicitor of the City of Cleveland, defendant in the foregoing action; that the facts statements and allegations contained in the foregoing answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence, this 23rd. day of October, A. D., 1905.

[SEAL.] JACOB M. CRAWFORD,
Notary Public.

(Endorsements:) In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. No. 6851. The Cleveland Electric Railway Company, Complainant *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. In Equity. Answer of the City of Cleveland, one of the Defendants in the above entitled cause to the Amended Bill of Complaint of The Cleveland Electric Railway Company filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio. Filed Oct 23 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Newton D. Baker, Attorney for City of Cleveland.

250 *(Answer of Forest City Railway Co. to Amended Bill.)*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the Forest City Railway Company, one of the defendants in the above entitled cause, to the amended bill of complaint of the Cleveland Electric Railway Company, filed against it and the City of Cleveland in the circuit court of the United States for the northern district of Ohio.

This defendant now and at all times hereafter reserving to itself the benefit of all rights of demurrer, and of objection to the said Amended Bill for the many errors and insufficiencies therein, for answer thereto, or so much thereof as this defendant is advised it is material and necessary for it to answer, says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said State; also that the City of Cleveland is a municipal corporation under the laws of the State of Ohio; and that this defendant,
The Forest City Railway Company is a corporation organized
251 under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said City of Cleveland.

II.

This defendant admits that this is a civil action and that the amount in the controversy, exclusive of interest and costs, exceeds the sum of Five Thousand Dollars ($5000.00); but denies that this is a controversy arising under the Constitution and Laws of the United States, or that the complainant seeks relief against this defendant or the City of Cleveland by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant or depriving it of any of its property without due process of law in violation of any article of the Constitution of the United States.

III.

This defendant admits that Garden street and Ohio street as referred to in the several ordinances mentioned and pleaded in the com-

plainant's bill and otherwise referred to therein were subsequently *united under one name, and designated "Central Avenue"* by which name the said former Garden street and Ohio street are now known.

IV.

This defendant admits that the complainant is a consolidated Company organized in the year 1893, and that it was formed by the consolidation of certain constituent companies, which, at the time of and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof as provided by the statute law of the State of Ohio, the complainant became and is possessed of all the rights, franchises, privileges and property
252 possessed by said constituent companies; but this defendant avers that the said consolidated Company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of said constituent companies and of the franchises granted to said constituent companies and each of them by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation are substantially as set forth in paragraph IV of its bill; but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland, no one of which expired before the first day of July, 1914.

V.

This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railway Company and The Cleveland City Cable Railway Company, that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue & West Side line, and that The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Clevland City Cable Railway Company was operating expired
253 before January, 1910.

This defendant denies each and every other allegation or inference of fact or law set forth in paragraph V of the complainant's amended bill.

VI.

This defendant admits that the total mileage of single track which is operated by complainant as the successor in interest of all the

various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to this defendant and set forth in paragraph XXVIII of complainant's bill is about twelve (12) miles.

VII.

This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's amended bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railway Company, a corporation incorporated some time during the year 1859 under the incorporation law then existing in the State of Ohio known as the Act of May 1, 1852, and that on the first day of November, 1859, and the 3rd day of July, 1860, and the 15th day of April, 1862, there was passed by the Council of the City of Cleveland certain ordinances or resolutions which were duly accepted by said Company granting permission for the construction, maintenance and operation of a line of railway beginning at the easterly city limits at Willson avenue; thence
254 via Euclid avenue, Case avenue, Prospect street, Erie street, Euclid avenue to and around the southerly and westerly sides of the Public Square to and in Superior street and through Superior street to Water street.

And this defendant says that at the time each of said ordinances and resolutions were passed, there was in existence and in force a general ordinance subject to which said grants of permission were made, entitled: "Ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland," duly and legally adopted on the 20th day of September, 1859, by the Council of said City and that

Section XIII thereof was as follows:

"No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance."

And the defendant further says that the resolution or ordinance aforesaid passed on November 1, 1859, and accepted by said Company, provided as follows:

"Whereas, The East Cleveland Railroad Company in compliance with the provisions of an Ordinance of the City of Cleveland, passed Sept. 20th, 1859, entitled 'An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland,' has obtained the requisite consent of the property owners and holders to lay their track on Prospect Street from its intersection with Erie street to the eastern terminus of said street, and from the intersection of Euclid street and Willson avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect street upon the

line indicated by said company in the published notice hereto attached; therefore,

"Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided, said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of Jan., 1861, and this the license of said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of Sept., 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly
255 understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this, their license shall cease. (Adopted Nov. 1st, 1859.)

And this defendant further says that the resolution aforesaid passed July 3, 1860, provided as follows:

"Resolved, That the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turnouts from said Prospect Street in said city, commencing at its intersection with Erie Street, thence on and along Erie Street to Superior Street, thence on and along Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior street, subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland R. R. Co., to use and occupy streets in said city, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860."

And this defendant further says that the resolution aforesaid passed on the 15th day of April, 1862, contained a similar provision making the same subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways passed September 20, 1859, and was limited by the terms thereof to expire on the 20th day of September, 1879.

This defendant admits that under the several resolutions or grants as aforesaid the lines of street railway therein authorized were afterwards constructed; but this defendant denies each and every other allegation and inference of fact or law set forth in paragraph VIII of the complainant's amended bill not herein specially admitted to be true.

IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in the complainant's amended bill, the Trustees of East Cleveland Township passed a reso-
256 lution, and also an ordinance granting permission to said Company to construct and operate a street railroad in Euclid

avenue easterly from the intersection of Willson avenue to Doan's Corners, now being the corner of Euclid avenue and Fairmount street, and that under said grant the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of the line previously constructed by the said Company under the authority of the ordinances and resolutions mentioned and described in paragraph VIII of the complainant's amended bill; and this defendant admits that the territory between Willson avenue and Doan's Corners was annexed to and became a part of the City of Cleveland in the year 1872.

This defendant denies each and every allegation and inference of fact or law, except as herein admitted to be true, set forth in paragraph IX of complainant's amended bill.

X.

This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of the City of Cleveland, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Railroad Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with
257 Garden street; thence easterly along the center of Garden street to and across Willson avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date of the passage of said ordinance expiring January 14, 1888; and that the right during said period of twenty years from the date of said ordinance was also given "to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of the City of Cleveland granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining the consent in writing of the majority of property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true as set forth in paragraph X of complainant's amended bill.

XI.

This defendant further admits that after the construction of the street railway on Garden street, pursuant to the ordinance described in paragraph X of the complainant's amended bill and this answer,

the Council of the Village of East Cleveland which adjoined the City of Cleveland on the East and is now a part of said City, granted permission to the said The East Cleveland Railroad Company "to con-
struct, use and operate a street railroad as a branch of its
258 railroad through and along the following streets in said Village, to-wit, beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue, running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street," which grant was accepted by said Company and the line thereby authorized was constructed and put in operation.

And this defendant avers that the resolution and preamble of the ordinance making such grant of permission provided as follows:

"Resolved by the Village Council of the Village of East Cleveland that the right is granted and the consent of the Village of East Cleveland is hereby given to The East Cleveland Street Railroad Company to construct a street railroad in the center of Baden street commencing at the city line of the City of Cleveland on Willson avenue running easterly to the center of Baden street; thence southerly in the center of Baden street to the southerly line of Wade street with the necessary turn-outs and switches and to operate the same for a period of twenty years from its completion, said construction to be commenced and completed within a period of five years from this date."

And this defendant avers that at the time said ordinance was passed, municipal corporations of the State of Ohio had authority in granting permission to street railway companies chartered by the State of Ohio to construct, maintain and operate lines of railway to agree with said companies upon the terms and conditions upon which such grants of permission should be made; by reason whereof the period fixed for the expiration of said grant or permission in all of said ordinances and resolutions referred to in this answer are valid and binding upon the Company to whom the same was made.

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true—set forth in paragraph XI of complainant's amended bill.

259

XII.

This defendant is not advised as to the agreement or the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 7, 1870 described in paragraph XII of the complainant's amended bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of the City of Cleveland passed a resolution which was duly accepted by said Company whereby permission was granted to the East Cleveland Railroad Company "to lay a double track street railroad in Ohio street from their present track in Brownell street to

Erie street, and in Erie street from Ohio street to Prospect street to connect with the main track at this point;" that as one of the conditions of said grant of permission it was provided: "that said Company shall on completion of said tracks in Erie street and Ohio street *from* take up and remove *the present* track in Brownell street to the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority did construct a double track street railroad as therein provided as an extension of the tracks of its Garden street branch and on the completion thereof did take up and remove the existing track in Brownell street between Prospect and Ohio streets.

And this defendant avers that said resolution of March 27, 1873, also contained the following provision:

"6. All ordinance of the City now in force or that may hereafter be enacted for the government and regulation of street railroads shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks."

And that as already set forth, Section XIII of the General
260 Ordinances of the City of Cleveland passed September 20, 1859, then in force and effect relating to passenger street railways, provided that no contract under the provisions of said ordinance shall be made for a longer period than twenty years from the date of the passage of that ordinance.

This defendant denies each and every other allegation and inference of fact and law not herein expressly admitted to be true — set forth in paragraph XIII of complainant's amended bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of the City of Cleveland and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden street branch of its road to the easterly end thereof along Garden street to Baden avenue, and along Baden avenue to Quincy street and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XIV of the complainant's amended bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of the City of Cleveland passed another ordinance entitled,

"An Ordinance granting a renewal of franchise to The East
261 Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;" that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879; and the said ordinance authorized The East Cleveland Railroad Company "to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior street at the intersection of Water street; thence through Superior to and around the southwest corner of Monumental Square to Euclid avenue; thence through said Avenue to Erie street; thence through Erie street to Prospect street; thence through said Prospect street to Case avenue; thence through said *Sace* avenue to Euclid avenue; thence through and along said Euclid avenue to Willson avenue;" and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its
lines of railroad theretofore constructed and in operation in
262 Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself.

And this defendant further says that on the 4th day of April, 1883, Council of the City of Cleveland passed another ordinance entitled,

"An Ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid avenue from the west line of Willson avenue to the east line of Fairmount street."

That by Section 1 of said ordinance, the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson avenue to the east line of Fairmount street, and upon the terms and conditions expressed in said ordinance; that among the terms and conditions expressed therein was one which provided that the right to have and operate its said railroad on said Euclid avenue between the west line of Willson avenue and the city limits, shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's lines lying west of Willson avenue.

And this defendant avers that the ordinance herein referred to passed on September 15, 1879, and that passed on the 4th day of

April, 1883, were passed pursuant to the authority of an act of the Legislature of the State of Ohio passed June 12, 1879, which among other things provided:

"and any cities of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests." (76 O. L. p. 157.)

That both of said renewal ordinances were made upon terms and conditions mutually agreed upon and considered by the Council of the City of Cleveland conducive to public interest, and were accepted by said Company. By reason whereof, this defendant avers
263 that a new contract for the entire lines of street railway covered thereby was made between the parties which supercedes the antecedent contracts and grants, and measures and determines the respective rights and interests of the parties.

And this defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XV of complainant's amended bill.

XVI.

This defendant further admits that on or about the 22nd day of March, 1880, another ordinance was passed by the Council of the City of Cleveland and accepted by said Company; that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and around said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for a period of twenty-five years from and after the passage of this ordinance."

And this defendant avers that the territory covered by this extension lies east of the line authorized by the resolution or ordinance of the Council of East Cleveland passed on or about the 30th day of March, 1868, and set forth and referred to in paragraph XI of the complainant's amended bill and of this answer, and that the line of street railway authorized by said last mentioned resolution or ordinance of the Village of East Cleveland is included in and a part of the Garden street branch of the railway of The East Cleveland Railroad Company, the right to operate which, together with the residue of said Garden street branch, is, by the ordinance passed on the 22nd of March, 1880, renewed for a term of
264 twenty-five years, all expiring on the 22nd day of March, 1905, and that said ordinance of March 22, 1880 was passed upon a good and sufficient consideration for the surrender and release of any rights and privileges previously owned by said Company, and was made pursuant to the authority of the act of the Legislature of the State of Ohio passed on the 12th of June, 1879, already cited; and that said Railroad Company accepted said ordinance of March 22, 1880, availed itself of the benefits of the extension of tracks thereby authorized covering a distance of two or three additional miles; by reason whereof this defendant avers that the

ordinance of March 22, 1880, became and is a valid and subsisting contract between the City of Cleveland and The East Cleveland Railroad Company whereby all antecedent rights of either party were merged and extinguished, and their rights thereafter are to be measured and determined by said ordinance.

And this defendant avers that afterwards, to-wit, at the January term, 1891, of the Circuit Court of Cuyahoga County, that being the county within which the City of Cleveland is situated, a suit in *quo warranto* was instituted in the name of the State of Ohio at the relation of Hadden *v.* the said The East Cleveland Railroad Company for the purpose of ousting the said The East Cleveland Railroad Company from the exercise of its rights and franchises on the lines of streets covered by the ordinance of the 22nd of March, 1880; and it was therein adjudged and held by the Court that the passage of the ordinance of March 22, 1880 and the acceptance thereof by the said The East Cleveland Railroad Company was a surrender by said Company of all rights and franchises previously held by said Company on said streets as of said date, and the making by the City of a renewal grant as of that date for said entire line of street railway for a term of twenty-five years; wherefore, this defendant says that the question of the expiration of all grants for said
265 Garden street branch made previous to the 22nd day of March, 1880, is *res adjudicata*. (State *v.* East Cleveland Railroad Company 6 C. C. 318. Affirmed by Supreme Court, 27 W. L. B., 64.)

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVI of complainant's amended bill.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company entitled: "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it, by said ordinance, authorized and empowered The East Cleveland Railroad Company to extend "the Garden street branch of its railway from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden street branch, and that the words "its main line" means that line of street railway owned by The East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complainant's amended bill, and that on the 9th day of February, 1885, when the

ordinance above quoted was passed, the termination of the
266 grant for said main line was the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy Street east of Lincoln avenue were limited to expire.

The defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVII of the complainant's amended bill.

XVIII.

This defendant admits that on or about June 17, 1887, the Council of the City of Cleveland passed another ordinance entitled: "An Ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway;" that said ordinance was duly accepted by said Company; that it authorized and empowered said Company "to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue upon Garden street in an easterly direction along and upon said Garden street to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden street main line."

This defendant avers that the Garden street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of the City of Cleveland passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden street main line is the 22nd day of March, 1905.

267 This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XVIII of the complainant's amended bill.

XIX.

This defendant admits that on or about July 13, 1888, the Council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to the City of Cleveland by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid avenue from Willson avenue to the city limits, and on Cedar avenue from The Cleveland & Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned:" that the ordinance passed in pursuance

thereof is entitled: "An Ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar avenues;" that said ordinance recites the communication from the Street Railroad Company already set forth, and granted permission to said Company "to propel and operate the cars upon the following named streets in said City, to-wit, Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near The Cleveland & Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street; that the privilege
268 thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines; and it was further provided by Section VIII thereof that whenever the Council "shall so require, the said Company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th day of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's amended bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth
269 in paragraph XIX of the complainant's amended bill.

XX.

This defendant admits that on or about March 10, 1890, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company authorizing it to substitute electrical motive power for horse power upon the Garden street branch of its railway; that said ordinance is entitled: "An Ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch;" that said ordinance authorized said Company, "to operate its Garden street branch by electricity *i. e.*, from the intersection of Prospect and Erie

streets, along Erie street to Ohio street; along Ohio street to Brownell street; along Brownell street to Garden street; and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street and along Quincy street to Woodland Hills avenue." And the right thereby given to erect and maintain on said streets poles and wires and the necessary appliances and fixtures for the purpose of operating and to operate electric motive power, it was expressly provided by said ordinance, should only continue "during the term of its present grant for said Garden street;" which grant, the defendant avers, terminated the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in Paragraph XX of complainant's amended bill.

XXI.

This defendant admits that on or about the 30th day of March, 1891, the Council of the City of Cleveland passed another ordinance which was duly accepted by said The East Cleveland Railroad
270 Company granting the right to said Company to construct and operate a second or additional track upon Central avenue (formerly known as Garden street) from the east line of Willson avenue to the right of way of The Cleveland & Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central avenue at Willson avenue and at The Cleveland & Pittsburg Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the right herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's amended bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's amended bill and of this answer, then this defendant avers that it was not
271 within the power of the Council in extending the track of the Garden street branch to fix a different date for the expiration

of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXI of the complainant's amended bill.

XXII.

This defendant admits that on or about April 20, 1891, the Council of the City of Cleveland passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills avenue, and authorized said Company to connect said tracks with the tracks now laid upon New street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the expiration of the grants for said Company's tracks on said Quincy street east of Lincoln avenue, to-wit, July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy street east of Lincoln avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's amended bill and of this answer, and by the terms of which the rights thereby granted expired either on the 22nd day of March, 1905, or on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said Company's tracks on Quincy street east of Lincoln avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXII of the complainant's amended bill.

272

XXIII.

This defendant admits that on or about the 17th day of July, 1893, the Council of the City of Cleveland passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect street from Erie to Ontario street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets; thence along Seneca street to Lake street; and thence along Lake street to Ontario street; and thence along Ontario street to the center of Monumental Park connecting with the present tracks in Ontario street; and also to construct and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it was also provided that the Council should have the right at any

time to require the Company to operate its cars over the entire length of any of the lines or extensions or said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply to and be a condition on each and all, the grants made by the Council to said constituent companies or either of them.

273 This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "devil strip" on all streets and street intersections wherein any tracks on any of the lines of said Company are laid in a manner satisfactory to said Director; but this defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double street railroad had been originally constructed as a part of the Garden street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of said city required all cars operated upon said Garden street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIII of the complainant's amended bill.

XXIV.

This defendant further admits that on February 19, 1894, the Council of the City of Cleveland passed an ordinance entitled: "An Ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson avenue," and that said ordinance was

274 duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hugh and Willson avenues to the northerly terminus of said Willson avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its

present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provides as follows: "A passenger on any car operated on any part of said Willson avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line
275 of the Company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson avenue, and that the two companies were required to widen the roadway of said Willson avenue between Euclid avenue and Scovill avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIV of the complainant's amended bill.

XXV.

This defendant admits that on or about June 25, 1894, the Council of the City of Cleveland passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, was being operated in Quincy street and is therein referred to, was the Garden street branch of the East Cleveland Railroad Company; and which had been constructed and operated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate
with the grant for said Company's present line in Quincy
276 street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of

fact or law not herein expressly admitted to be true, set forth in paragraph XXV of the complainant's amended bill.

XXVI.

This defendant admits that on the 29th day of May, 1893, the Council of the City of Cleveland passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

"To the Honorable City Council of the City of Cleveland:

"GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of The East Cleveland Railway Company and the Broadway and Newburg Street Railway Company. Subsequently, it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of The Cleveland Electric Railway Company, the Company desires to state to you officially that it does not claim any rights greater than
277 the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the Company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *Vice Pres.*"

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved, that the Council hereby consents to the consolidation

of the East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

"That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said
278 lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, complainant accepted the same in writing, but denies that the force and effect of such consolidation or of any of the other resolutions or ordinances pleases in said bill or of any of the laws of the State of Ohio relating thereto is to confer upon the complainant the right to operate its system of street railways as an entire system so as to prevent the expiration of the several franchises granted to the complainant or any of its constituent companies at the time fixed by the ordinances and resolutions granting the same or that the force and effect thereof or of any ordinance authorizing an extension of track to be operated in connection with an existing line has the force and effect of extending the date for the expiration of any of the franchises of any of the constituent companies to the date of the last expiring franchise of any one of the companies going to make up said consolidated company or to any other different date than that fixed in the ordinances granting the franchise.

And this defendant avers as to all of the alleged extensions of time for the expiration of said franchises whether asserted by reason of consolidations or extensions of track or the imposition of transfer privileges and other burdens that it is not competent for the City Council to extend thereby the date for the expiration of the fran-
chise or to grant an extension of track to expire at a different
279 date from that of the franchise under which the track was laid which is being extended.

And this defendant avers that afterwards, to-wit, on the 5th day of August, 1901, the Council of the City of Cleveland passed an ordinance granting to the complainant the right to extend and operate a single track street railroad from Euclid avenue along the easterly side of the Public Square to Superior street, and to connect the same with its existing tracks, which grant it was provided should expire on the 22nd day of March, 1905, unless it be sooner terminated by the City, which grant was accepted by said Company.

And the defendant further avers that afterwards, to-wit, on the 26th day of June, 1902, the Council of the City of Cleveland granted

to the complainant the right to extend its double track street railroad on Erie street from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue, and to connect such extension with the existing tracks of said complainant, which grant it is provided shall expire on the 22nd day of March, 1905, and which grant was accepted by said Company.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVI of the complainant's amended bill.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railw Company, but it denies each and every other allegation and inference of fact or law contained in paragraph XXVII of the complainant's amended bill not herein expressly admitted to be true.

280 XXVIII.

This defendant admits that the Council of the City of Cleveland on the 11th day of January, 1904, passed an ordinance No. 44240 in the words and figures as set forth in paragraph XXVIII of complainant's amended bill; that this defendant has accepted said ordinance and that it claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate and maintain upon the streets described in said ordinance which are now occupied by the complainant, a street railway, and to oust the complainant from the possession of said streets after the 22nd day of March; also that acting in pursuance of the terms of said ordinance, this defendant has made an effort to agree with the complainant as to the value of the tracks, wires, poles and other appliances in said streets to the end that this defendant may buy and pay for the same as provided for in said ordinance; also that the complainant has declined to negotiate with reference to the value of said property as therein described or to vacate the streets on or after the 22nd day of March, 1905.

This defendant admits that after the failure and refusal of said complainant to negotiate with reference to the value of said property, it made a request of the City of Cleveland which is in the language as follows:

"The undersigned respectfully asks that the City of Cleveland proceed at the earliest practicable moment to have the value of said track, poles, wires and appliances erected in the highways along the route described in said ordinance adjudicated by a court of competent jurisdiction, and also to adopt such proceedings as may be necessary to deliver possession to the undersigned of the streets and highways described in said ordinance." (Signed by The Forest City Railway Company, M. A. Fanning.)

And this defendant further avers that after the receipt of said request, the Council of the City of Cleveland adopted a resolution which is as follows:

"Resolved, that the communication of The Forest City Railway Company be referred to the City Solicitor to investigate the
281 rights and powers of the City of Cleveland in the premises and with power to institute or cause to be instituted such proceedings, if any, as he may deem advisable to have adjudicated the value of the property described in Section XIV of Ordinance 44244, and to compel The Cleveland Electric Railway Company to surrender possession after March 22, 1905, of the streets and highways included in the street railway routes described in said ordinance."

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVIII of complainant's amended bill.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland or that the complainant has any contract with respect to the streets covered by said ordinances which continues in force until July 1, 1914, or to any date subsequent to the 22nd day of March, 1905.

And this defendant further denies that said ordinance is void in that it is an attempt to deprive the complainant of its property or any part thereof without due process of law; and this defendant denies that said ordinance authorizes or that this defendant has or ever had any intention to take possession of all or any of the property used by the complainant in the operation of its street railway in the streets in said ordinance described, except by an agreement with and purchase from said complainant or after the right to do so and the compensation to be paid therefor had been ascertained and determined by a court of competent jurisdiction, and paid by this defendant.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant in furtherance of any combination or conspiracy with the municipal authori-
282 ties of the City of Cleveland or any other person or persons for the purpose of depriving the complainant of its right to operate a street railway in the streets described in said ordinance unless it will submit to an unreasonable requirement as to its rates of fare on its other lines of railway in the City of Cleveland; but this defendant avers that it applied for and obtained said ordinance in good faith and as soon as it can lawfully obtain possession of said streets expects to maintain and operate its system of street railway thereon according to the terms and conditions in said ordinance.

This defendant admits that in accordance with the provisions of said ordinance, it intends to use all lawful means to obtain possession of the rights granted to it by said ordinance and intends to maintain and operate a line of street railway upon the streets therein described; but it denies that so doing will deprive the complainant

of the benefit of any existing contract rights or of any of its property without due process of law, or that it will make it impossible for the complainant to carry out other existing contracts with the City according to the true intent and effect thereof.

This defendant also denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue and great inconvenience, conflict and trouble would arise over complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in complainant's bill it is without remedy at law.

This defendant denies all of the allegations and inferences of fact or law contained in paragraph XXIX of complainant's amended bill not herein expressly admitted to be true.

283 And now having fully answered the complainant's amended bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

[CORPORATE SEAL.] THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *Pres't.*

STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn deposes and says that he is the President of the defendant Company, The Forest City Railway Company, and that the facts and allegations contained in the foregoing answer are true as he verily believes.

A. H. FIEBACH,
[NOTARIAL SEAL.] *Notary Public.*

GARFIELD, HOWE & WESTENHAVER,
Solicitors for Respondent.

Endorsements on Answer of The Forest City Railway Company to the Amended Bill of Complaint: No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Answer to Amended Bill. Filed Oct. 24, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

284 (*Replication to Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY Defendants.

Replication.

This replicant, the Cleveland Electric Railway Company, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the City of Cleveland, to the Amended Bill of Complaint, for replication thereunto saith that it doth and will aver, maintain and prove its said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly pray as in and by its said amended bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* City of Cleveland and The Forest City Railway Co. Defendants. Replication to Answer of City of Cleveland to Amended Bill of Complaint. Filed Nov. 3, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

285 (*Replication to Answer of the Forest City Railway Company.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Replication.

This replicant, The Cleveland Electric Railway Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The Forest City Railway Company, to the amended bill of complaint for replication thereunto saith that it doth and will aver, maintain and prove its said amended bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said amended bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* City of Cleveland and The Forest City Railway Co. Defendants. Replication to Answer of Forest City Railway Co. to Amended Bill of Complaint. Filed Nov. 3, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

286 (*Letter of Counsel.*)

Garfield, Howe & Westenhaver, Attorneys and Counselors at Law, Garfield Building, Cleveland, Ohio.

DEC. 20, 1905.

Mr. Robert B. Rifenderick, # 1522 Williamson Building, Cleveland, Ohio.

DEAR SIR: I send you herewith your compilation of the ordinances, resolutions, communications, maps, etc., in the case of the

Cleveland Electric Railway Company *vs.* The City of Cleveland and The Forest City Railway Company which have been examined and compared by us and is approved. This may be considered as a sufficient assent on the part of Mr. Baker and myself to its being filed as a testimony agreed on in the case.

Yours very truly, D. C. WESTENHAVER.

(Endorsed as follows:) 6851. U. S. Circuit Court, Northern District of Ohio, Eastern Division. Letter of D. C. Westenhaver. Filed Jan. 2 1905 Irvin Belford, Clerk.

287 (*Testimony Filed by Agreement of Parties.*)

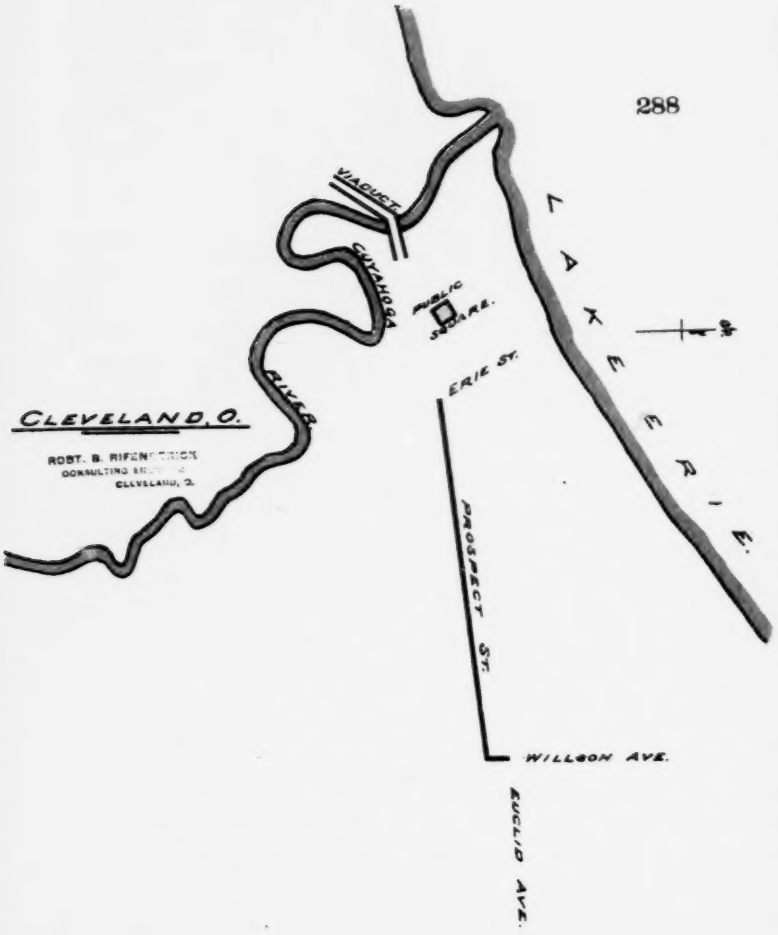
Resolution by Mr. Thayer.

Whereas, The East Cleveland Railroad Company in compliance with the provisions of an Ordinance of the City of Cleveland, passed Sept. 20th, 1859, *u*ntitled, "An ordinance prescribing the terms and conditions of street Passenger Railways within the City of Cleveland," has obtained the requisite consent of the property owners and holders to lay their track on Prospect street form its intersection with Erie street to the eastern terminus of said street, and from the intersection of Euclid street and Willson avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect street upon the line indicated by said company in the published notice hereto attached; therefore,

Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided, said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of January, 1861, and this the license of the said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of Sept., 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this their license, shall cease.

(Adopted Nov. 1st, 1859.)

(Here follows map marked page 288.)



The Black line shows the original grant of the route of the East Cleveland Railroad Company, by a resolution of the Council dated Nov. 1, 1859.

No. 58.
C.E.Ry Co. A 288
Cleveland dat

289 *Resolution.*

By Mr. WILLARD:

Whereas, The Kinsman Street Railroad Company have signified to the Council of the City of Cleveland, their intention to release to said City the permission to them already granted, to lay a single track railroad on Erie street from its intersection with Prospect street running thence on Erie street to Superior street; thence on Superior street to the Public Square and along the roadway running around the north side of the Public Square to Superior street west of the Public Square, and

Whereas, The East Cleveland Railroad Company have given notice of an application to said Council for permission to be granted to them to lay a street passenger railway from said intersection of Prospect on said Erie street on and along said route; therefore,

Resolved, That on said release being given, and when the time requisite for said notice expires and other conditions of the Ordinance prescribing the terms and conditions of Street Passenger Railways within said City, passed September 20th, 1859, shall be complied with, permission shall be granted to said East Cleveland Railroad Company to lay a Street Passenger Railway on and along said route, and on and along said Superior street to the Atwater block on said street, under the terms and conditions of said Ordinance, it being a continuation of their said route already granted to them, and whenever the word "track" occurs in the resolution granting permission to the Kinsman Street Railroad Company to occupy streets, passed October 25th, 1859, the same be stricken out and the word "passenger" inserted in lieu thereof. Also that the following provision in said resolution, viz: "That the East Cleveland Railroad Company shall be allowed to use the track of said Kinsman Street Railroad Company from the intersection of Prospect with Erie street to the Public Square, upon reasonable terms to be prescribed by the Council unless agreed upon by the parties," be stricken out of the same.

(Unanimously adopted June 5, 1860.)

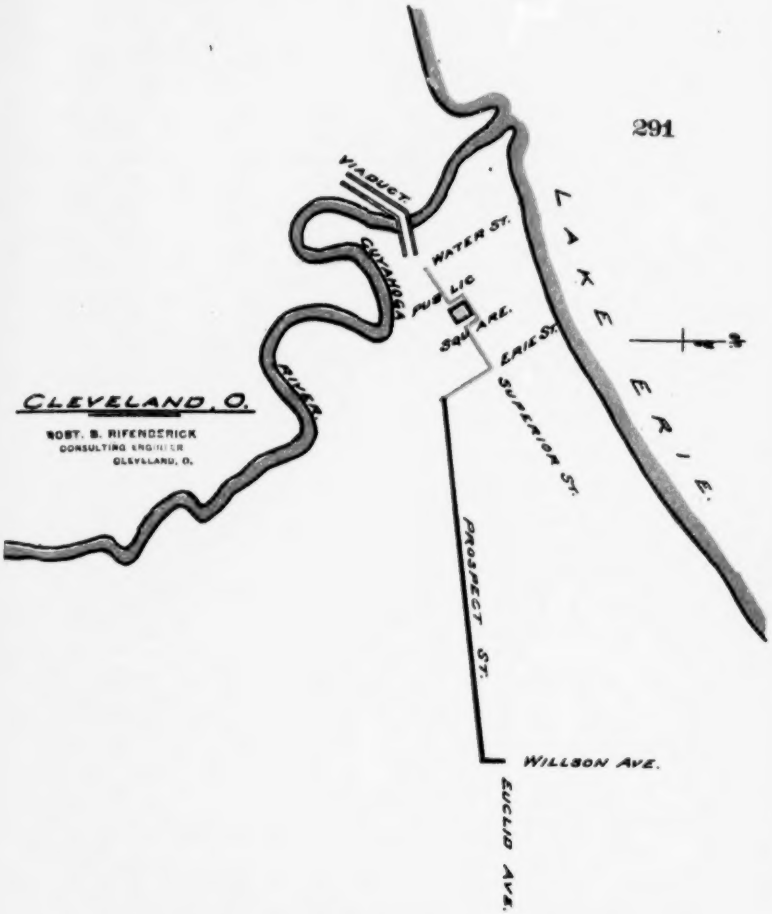
290 *Resolution.*

The Kinsman Street Railroad Company having released to the City the right granted to them in the resolution passed October 25th, 1859, to lay a single track railroad on Erie street from the intersection of Prospect street therewith, thence on Erie street to Superior street, thence on Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to Superior street west of the Public Square, and the requisite notice of publication in two daily papers having been given, and the written assent of the holders of more than two-thirds of the property fronting on said streets being produced, and the other conditions of the ordinance, prescribing the terms and conditions of street Passenger Railways within the City, passed Sept. 20th, 1859, having been complied with—therefore,

Resolved, That the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turn-outs from said Prospect street in said City, commencing at its intersection with Erie street, thence on and along Erie street to Superior street, thence on and along Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior street,—subject to the terms and conditions, and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland Railroad Company, to use and occupy streets in said city, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860.

(Adopted July 3rd, 1860.)

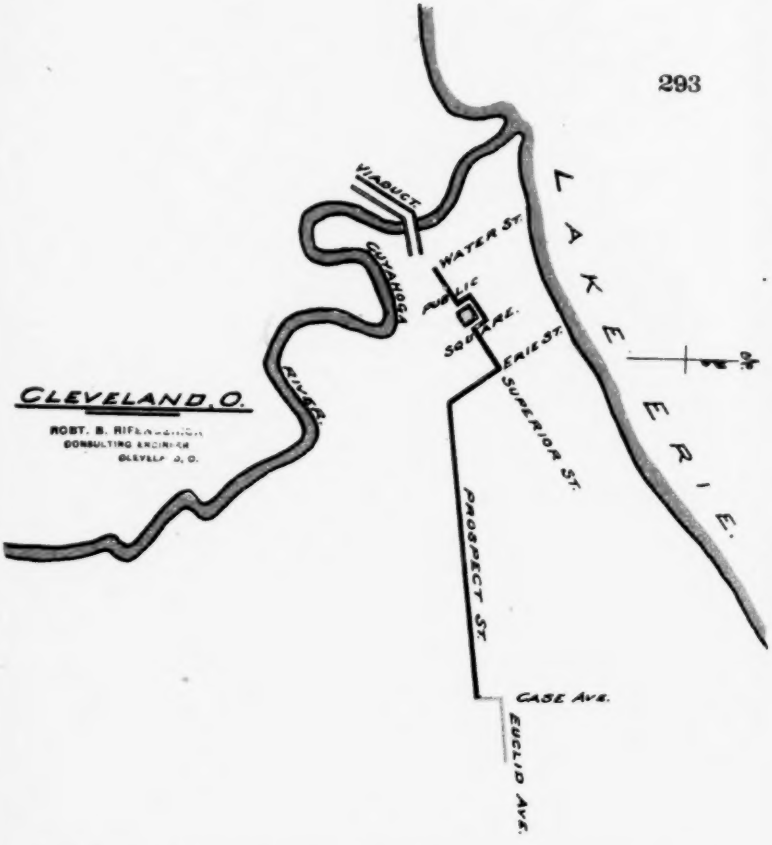
(Here follows map marked p. 291.)



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the resolution of the City Council June 5, 1860.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of June 5, 1860.

No. 581.
C. E. Ry Co
v.
Cleveland
et al.
p. 291



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the resolution of the City Council July 31, 1860.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of July 31, 1860.

No. 581.
C. & Ry. Co.
v.
Cleveland
et al.
p. 293

292 *Resolution.*

By Mr. STEVENS:

Whereas, The East Cleveland Railroad Company have complied with the terms and conditions of the ordinance prescribing the terms and conditions of Street Railroad Companies, passed Sept. 20th, 1859, and have presented to the City Council the written consent of the holders of two-thirds of the property fronting on the respective streets proposed to be occupied by said Company, therefore,

Resolved, That said East Cleveland Railroad Company be and is hereby permitted to lay a passenger railway with the necessary turnouts, from the intersection of Euclid street with Willson avenue, and on and along Euclid street to Case avenue, and on and along Case avenue to Prospect street, and on and along Euclid street to Hudson street, thence on and along Hudson street to its intersection with Prospect street subject to the terms and conditions of said ordinance and amendments thereto, and with the same rights and conditions contained in its permissions heretofore granted to said Company.

(Adopted July 31, 1860.)

(Here follows diagram marked page 293.)

294 *Communication.*

From H. S. Stevens, President of the East Cleveland Railroad Company.

To the Honorable the Mayor and City Council of Cleveland:

The East Cleveland Railroad Company hereby formally accept the several permissions heretofore granted to said Company to use and occupy certain streets in said city for the purpose of a Street Passenger Railway, and notify your Honorable Body that said Company have commenced the laying of said railway company's tracks on and along the streets specified, in accordance with said permissions and the Ordinance of the City Council passed September 20, 1859, and the amendments thereto authorizing the same.

H. L. STEVENS,
President, East Cleveland Railroad Co.

Received Aug. 7, 1860.

295 An ordinance to permit the East Cleveland Railroad Company to occupy the west part of Euclid street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be, and are hereby authorized and empowered to lay and construct a single Passenger Railway from the intersection of Erie and Euclid streets, westerly, on and along the centre of Euclid street to the Public Square, under such conditions and restrictions as the City Council may from time to time prescribe.

Passed April 15th, 1862.

I. U. MASTERS,
Pres. of the Council.

C. E. HILL,
City Clerk.

Acceptance.

At a meeting held at the office of the East Cleveland Railroad Company, April 18, 1862, at 9 A. M.—present: Wm. Hewitt, H. S. Stevens, John Blair and A. Everett,—it was unanimously

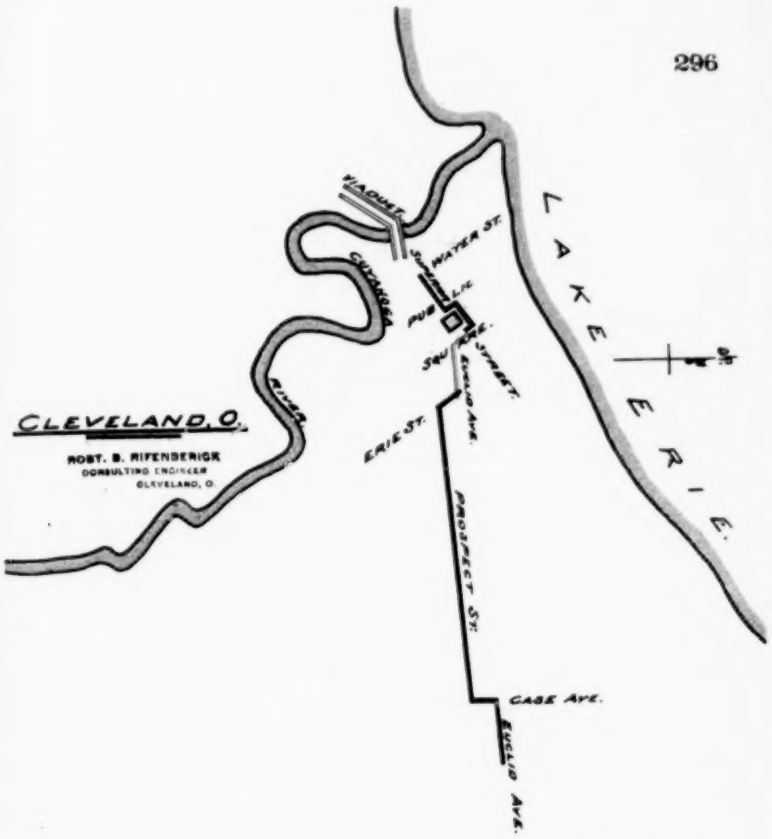
Resolved, That the East Cleveland Railroad Company accept the provisions of the Ordinance of the City Council passed Tuesday evening, Apr. 15, '62, authorizing said company to "Lay and construct a single passenger railway from the intersection of Erie and Euclid streets, westerly on and along the center of said Euclid street to the Public Square," under the conditions mentioned in said Ordinance, and that the secretary of the company be directed to furnish the City Clerk of the City of Cleveland with a copy of this acceptance with a notice that this company have commenced the construction of said railway in accordance with the provisions of said Ordinance.

Cleveland, Apr. 18, 1862.

S. G. BALDWIN,
Sec. E. C. R. R. Co.

Filed April 18, 1862.

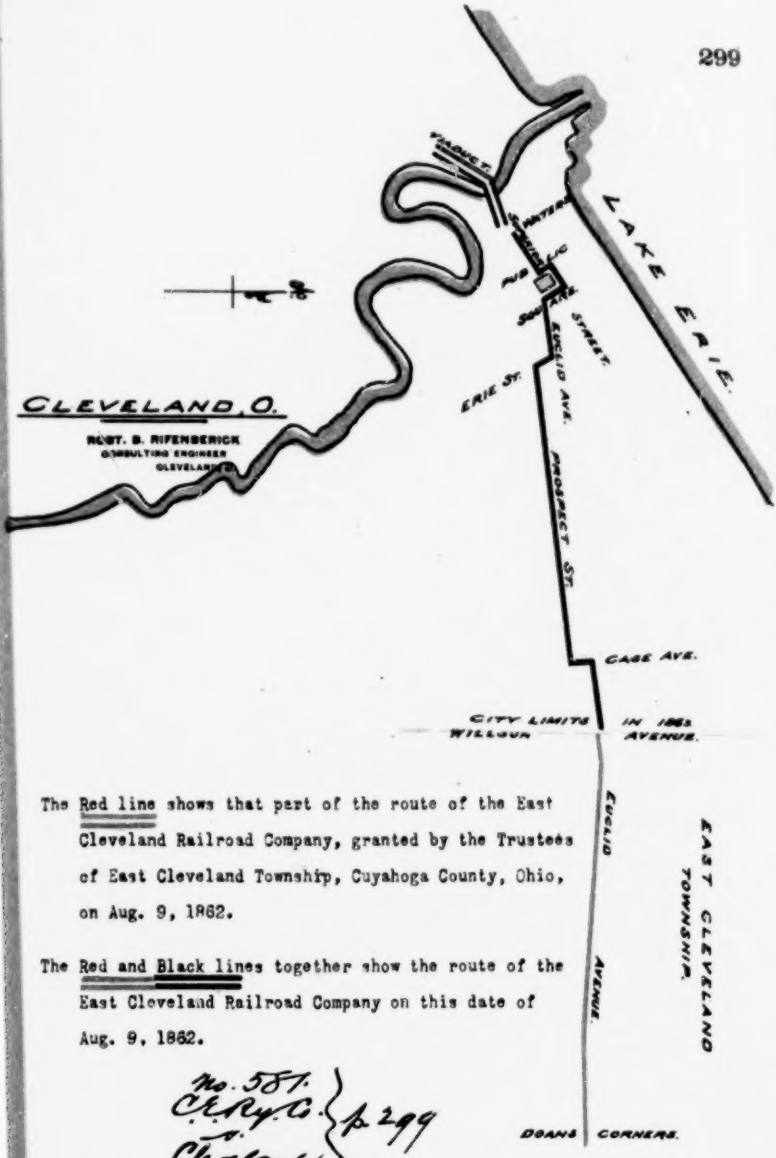
Here follows diagram marked p. 296.)



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by an ordinance of the City Council passed April 15, 1862.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of April 15, 1862.

No. 581
C. Ry. Co. } p. 296
Cleveland
etc



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the Trustees of East Cleveland Township, Cuyahoga County, Ohio, on Aug. 9, 1862.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of Aug. 9, 1862.

No. 581.
C.R.R.C. } p 299
of
Cleveland
et al.

297

EAST CLEVELAND, OHIO, *April* 11, 1862.

To the Trustees of East Cleveland Township.

GENTLEMEN: The undersigned, on behalf of the East Cleveland Railroad Company, respectfully petition your honorable body for permission to construct and operate a railway on and along the south side of the roadway, commonly called the Euclid Road, from its intersection with Willson avenue, eastwardly to the Croton or Malta House at Doanes Corners, so called, in East Cleveland Township, Cuyahoga County. Said road to be constructed after the most approved method, and as an extension of the East Cleveland (horse) Railroad already completed between said Willson avenue and foot of Superior Street, in the City of Cleveland.

Respectfully,

WILLIAM HEWITT,
Vice Prcs. E. C. R. R., for said Company.

298

EAST CLEVELAND, OHIO, *August* 9, 1862.

We, the undersigned, Trustees of the East Cleveland Township, Cuyahoga County, Ohio, hereby grant to the East Cleveland Street Railroad Company the full right and privilege to construct a single street passenger railway track from the center of Willson avenue along Euclid street, eastwardly to the Croton House at Doanes Corners in said East Cleveland. The center line of said street railroad track to be located ten (10) feet southerly from the center line of Euclid Plank Road, and the road to be constructed in a suitable manner so as not to obstruct the public convenience; and we also grant the East Cleveland Railroad Company the right to lay the necessary side tracks, or turn-outs, upon the southerly side of the main track, and also the privilege of crossing the Plank Road at or near the terminus of the road, if necessary.

I. F. BEERS,
S. COURRIER,
C. W. DELLENBAUGH,
Township Trustees.

(Here follows diagram marked p. 299.)

300 *Resolution.*

By Mr. CLARK:

Whereas, The East Cleveland Railroad Company has heretofore applied to the City Council of the City of Cleveland, for leave to construct a street railroad from the intersection of Prospect and Brownell streets to connect with the main line of its railroad, thence along the center of said Brownell street to its intersecti n with Garden street thence easterly along the center of Garden street to and across Willson avenue to the easterly boundary of said city, and

Whereas, Said Company has filed with the City Clerk the consent in writing of a majority of the property owners of the lots or parcels of land bounding or abutting on said streets, avenues, public grounds, and public highways, or parts thereof, along, by and through which said road is contemplated to be constructed, and

Whereas, Said Company has filed with this Council its bond in the penal sum of Twenty Thousand ($20,000.00) dollars with satisfactory security to construct said railroad within twelve (12) months from the date of the grant and leave given by this Council with certain kind of rail, as specified, and

Whereas, This Council is satisfied that the requisite notice for bids has been given, as contemplated by the statute in such case made, and that the bid filed in pursuance with said notice by said Company is the lowest rates of fare for carrying passengers on said road made by any other company or individual, Therefore, Resolved, That the consent of this Council is hereby obtained and leave is hereby given to the East Cleveland Street Railroad Company to enter upon and lay down a track with the necessary switches and turn-outs upon the said streets and to use and occupy said track and switches and turn-outs upon said streets and avenues as contemplated for and during the period of twenty (20) years from and after this
301 date, and also to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated, westerly from the junction of said road with the main line to its westerly terminus, for the same length of time, subject, however, to the provisions of an Ordinance of this City, passed December 4th, 1866.

(Adopted Jan. 14th, 1868.)

Acceptance.

To the Honorable the City Council of the City of Cleveland:

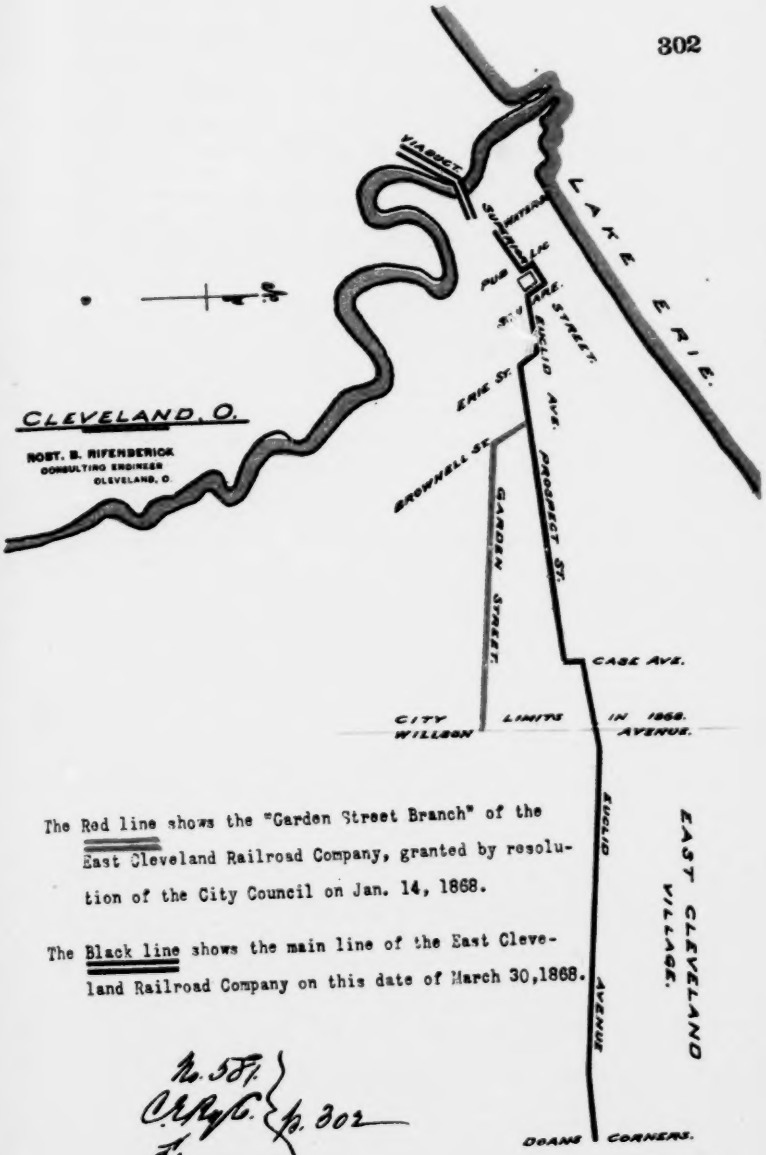
The East Cleveland Railroad Company by virtue of a resolution adopted at a special meeting of their stockholders called and held this 16th day of January, A. D. 1868, for that purpose, hereby accept the grants and permits to construct and operate a street railroad from their main track in Prospect street, through Brownell to Garden, and through Garden street to the easterly line of the City, in accordance with their petition and bid, and the ordinance and resolution of the Council hereto above attached.

Dated Cleveland, Ohio, January 16th, 1868.

5¢ Internal Revenue Stamp.

A. EVERETT,
Pres. East Cleveland St. R. R. Co.

(Here follows diagram marked page 302.)



The Red line shows the "Garden Street Branch" of the East Cleveland Railroad Company, granted by resolution of the City Council on Jan. 14, 1868.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1868.

No. 581.
C.R.Ry.C. } p. 302
Cleveland
etal.

303 To the Honorable the Mayor and Common Council of the Village of East Cleveland:

The undersigned, the East Cleveland Railroad Company, a corporation duly organized, is desirous of extending its branch railroad from its terminus at the easterly line of the City of Cleveland on Willson avenue along the center of Garden street to its intersection with the center line of Bayden street, thence southerly to the southerly line of Wade street in said Village, and said street railroad company is desirous to agree upon the manner and terms and conditions upon which the Council will permit said company to construct and operate said road, over and along said streets.

The undersigned, therefore, would respectfully ask your Honorable body to take such actions in the premises as the convenience of the public demands and the law will permit.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *Pres.*

304 An ordinance to authorize the East Cleveland Railroad Company to construct a branch railroad on Garden and other streets in the Village of East Cleveland was then introduced and read before the council and a motion for the suspension of the rule requiring that before an Ordinance be passed it be read before the Council on three different days having been made and passed by the following votes, viz: Yeas 6, nays 0; and the said ordinance having been three times read before the Council and a motion that it be engrossed and a vote upon its passage taken having prevailed, said ordinance was passed by the following vote, viz: yeas 6, nays 0. The said ordinance is as follows, viz:

An Ordinance to authorize the East Cleveland Railroad Company to construct a branch railroad on Garden and other streets in the Village of East Cleveland.

Be it ordained by the Common Council of the Village of East Cleveland, That the East Cleveland Street Railroad Company may, and the consent of said Village is hereby granted to said railroad company to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in said Village, to wit: Beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street; also to construct and use in said street all necessary turn-outs or switches to a proper and convenient use of said railroad, Provided always, and the above consent and grant is made by said Council upon the conditon that said railroad company will agree to carry passengers on said railroad at rates as low or lower than any other company or individual will do the same, and provided further, that said railroad company shall not commence the construction of said railroad until the consent in writing of a majority of the owners of the lots abutting on said

street shall have been obtained and filed with said Village or
305 until the rights of lot owners are condemned by due course of law; subject, however, to any ordinance that may hereafter be passed by this Council relative to street railroads.

This ordinance shall take effect and be in force from and after its passage.

Passed March 30th, 1868.

W. S. STREATOR, *Mayor.*

R. HARLON, *Recorder.*

The following preambles and resolution was then introduced and adopted:

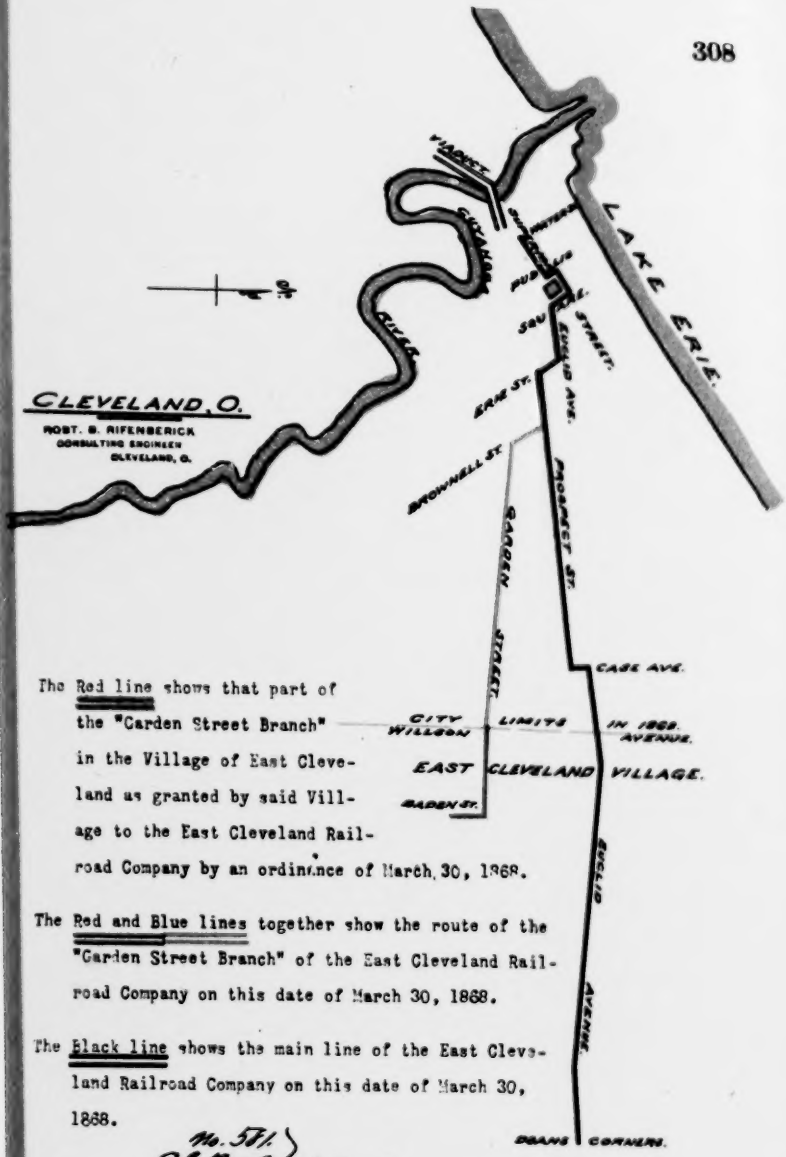
Whereas, It has been duly proved to the Council of the Village of East Cleveland, that notice for three (3) consecutive weeks has been published in the Cleveland Herald, a newspaper of general circulation in said Village, requesting bids from different corporations and individuals for carrying passengers from Willson avenue to Wade street over Garden and Baden streets, both ways, said Village proposing to give its consent to use said streets with a street railroad to such corporation or individual that would carry passengers at the lowest price, and

Whereas, The East Cleveland Street Railroad Company has offered to and has agreed to carry passengers each way on a street railroad to be constructed by said company or any intermediate distance over the same from Willson avenue to Wade street over Garden street to Baden and over Baden to Wade street for the sum of five (5¢) cents for each passenger for each way or any intermediate distance over the same, and

Whereas, Said bid being the lowest made for carrying passengers over the said road, and

Whereas, Said East Cleveland Street Railroad Company has filed with the Recorder of said Village the consent in writing of a majority of all the owners of lots of land abutting on each of said Garden street, and Baden street, Now therefore it is hereby
306 Resolved, by the Village Council of the Village of East Cleveland, that the right is granted and the consent of the Village of East Cleveland is hereby given to the East Cleveland Street Railroad Company to construct a street railroad in the center of Garden Street commencing at the City line of the City of Cleveland on Willson avenue running easterly to the center of Baden street; thence southerly in the center of Baden street to the southerly line of Wade street, with the necessary turn-outs and switches, and to operate the same for the period of twenty (20) years from its completion; said construction to be commenced and completed within a period of five (5) years from this date.

(Adopted March 30, 1868.)



The Red line shows that part of the "Carden Street Branch" in the Village of East Cleveland as granted by said Village to the East Cleveland Railroad Company by an ordinance of March 30, 1868.

The Red and Blue lines together show the route of the "Carden Street Branch" of the East Cleveland Railroad Company on this date of March 30, 1868.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1868.

No. 571.
C.E.Ry.Co.
Cleveland
Ohio
} p. 308.

307 *Acceptance.*

EAST CLEVELAND, OHIO, *July* 13, 1868.

The following document was presented by the attorney of the Railroad Company and ordered to be entered on the records of the Council:

To the Honorable the Village Council of East Cleveland:

The undersigned, The East Cleveland Railroad Company hereby accept the grant and privilege of building, constructing and operating a street railroad from Willson avenue to the southerly side of Wade street over and along Garden to Baden, and over and on Baden to Wade street, according to the terms and conditions of the ordinance of said Village.

(Signed) THE EAST CLEVELAND STREET RAILROAD COMPANY,
By THOMAS BOLTON, *Attorney.*

Received July 13th, 1868.

(Here follows diagram marked page 308.)

309 *Resolution.*

By Mr. CLARK:

That the East Cleveland and Kinsman Street Railroad Company be authorized and permitted to lay and construct a double track, as follows: viz: The East Cleveland Company, at its sole expense, a double track from the east line of the Public Square, on Euclid street, to the intersection of the center line of the south side of the Square, and the East Cleveland and Kinsman Street Railroad Companies from the last named point along the south and west side of the Public Square to the center line of Superior street, at the joint and equal expense of said companies.

Said last described double track to be jointly used and operated by the said companies for the term of twenty (20) years, but subject to the terms and conditions, as to paving and repairing, provided in an Ordinance entitled "An Ordinance to repave the street on the south and west sides of Monumental Park," passed June 25, 1855.

(Adopted July 1st, 1868.)

310 *Acceptance.*

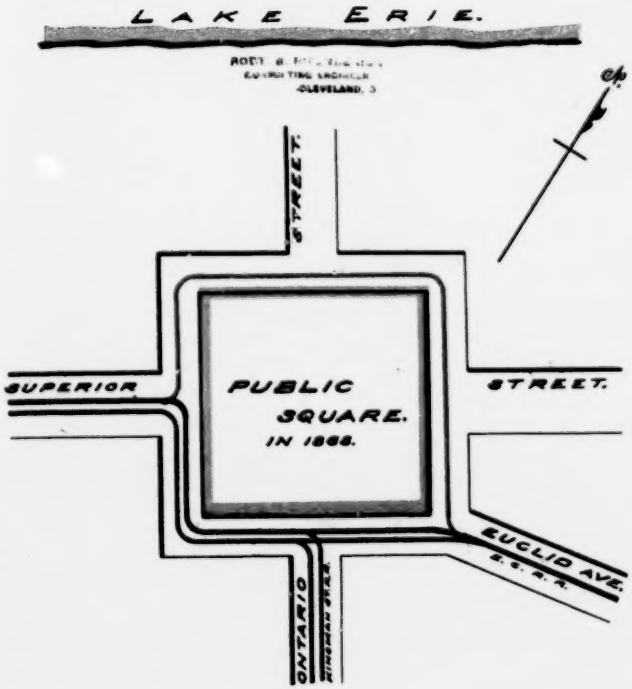
To the Honorable the City Council of the City of Cleveland:

The undersigned, The East Cleveland and Kinsman Street Railroad Companies, each for itself, and jointly, hereby accept of the conditions, terms and permits granted by your Honorable Body in Resolution passed by the Council, July 1st, 1868, granting certain rights and privileges to the East Cleveland Street Railroad Company separately, and to the East Cleveland and Kinsman Street Railroad Companies jointly, to construct, use and occupy certain double track railroads on the south and west sides of Monumental Park, mentioned in said resolution (reference hereby is made to said resolution for a more particular description).

Cleveland, Ohio, July 2nd, 1868.

A. EVERETT,
Pres. East Cleveland Street R. R. Co.
A. R. MITCHELL,
Kinsman Street Railroad Company.

(Here follows map marked page 311.)



The Black lines show the grant made to the East Cleveland Railroad Company and the Kinsman Street Railroad Company jointly, for double tracks around the south and west roadways of the Public Square, by the resolution of July 1, 1868.

The Red line shows the route of the East Cleveland Railroad Company around the north side of the Public Square at the time of the adoption of the above.

No. 581.
C.R.Ry.Co.
vs.
Cleveland
et al.
} p. 311.

312 An ordinance authorizing the Mayor of the Incorporated Village of East Cleveland to enter into a specific agreement, on behalf of said Village, with the East Cleveland Railroad Company in regard to the occupancy by said Company of Euclid Avenue.

Be it ordained by the Village Council of the Incorporated Village of East Cleveland, a majority of the owners of property abutting on Euclid Avenue between Willson avenue and Newburgh street consenting that the mayor of said Village be, and he is hereby authorized for and on behalf of said Village, to enter into the following agreement with the East Cleveland Railroad Company, its President being legally authorized by said Company to enter into the agreement on behalf of said Company.

Memorandum of an agreement entered into by and between J. E. Hurlbut, Mayor of the Village of East Cleveland, for and on behalf of said Village, and A. Everett, President of the East Cleveland Railroad Company, for and on behalf of said Company.

Witnesseth, In consideration of the several things to be done by the Village of East Cleveland and the East Cleveland Railroad Company herinafter stipulated, it is hereby mutually agreed

That said Company shall have the right, and the same is hereby conferred, as far as said Village has the power to grant it to remove its track from the southerly side of Euclid avenue in said Village and place the same in the center of said Avenue, so that the center line of said track shall coincide as nearly as possible with the center line of said Avenue; also the right to construct in said Avenue all necessary turn-outs or switches, the same, however, to be like the one now used by said Company on its road in the City of Cleveland nearest Sterling avenue; also the right to use said track and switches when so removed and constructed for the purpose of operating a street railroad, and the aforesaid rights and privileges shall be enjoyed by said Company during its corporate existence, and
313 during any period for which the same may be renewed. It is also *further agreed* that said Village will do all the necessary grading on said avenue at its own expense and will pave the same outside of and between said rails, and the said Company agrees to remove its said track and relocate the same as aforesaid and to use in the reconstruction thereof a flat rail of the same pattern as that now used by the Kinsman Street Railroad on Woodland avenue in the City of Cleveland, and also to keep the space between its rails after being in the first instance paved by said Village, as above specified, in a proper state of repairs. Yeas 6, nays 0.

On motion to suspend the rules: Yeas 6, nays 0. On motion ordinance passed to 2nd reading: Yeas 6, nays 0. On the motion for final passage: Yeas 6, nays 0.

Passed Aug. 2nd. 1870.

JOHN E. HURLBUT, *Mayor.*

D. P. STEBBINS, *Clerk.*

314 *Memorandum of an Agreement*

made this 26th day of August, 1870, by and between the Village of East Cleveland, Cuyahoga County, Ohio, duly incorporated as such under the laws of said State, and the East Cleveland Railroad Company, a corporation legally organized under the statutes of Ohio, entitled "An Act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1st, 1852, "and the Acts amendatory thereto," and having constructed its track and operated the same for several years within the Township of East Cleveland prior to the incorporation of said Village and also within the present corporate limits of the same, viz: from Willson avenue to Newburg street by and with the consent of the proper officers of said Township and of Cuyahoga County and of the authorities of said Village and of the owners of the lots abutting on Euclid street between said terminal of said road, the same having been constructed and operated upon the southerly side of the carriage way of said Euclid street, and being an extension or branch of its main road located in the City of Cleveland and having collected five (5) cents for each and every passenger on said branch or extension any distance East or West within said Township or Village between said termini, and

Whereas, Said Village proposes and is about to grade and pave or macadamize the whole of the carriage way at least forty (40) feet wide of that part of Euclid street along and on which said Railroad Company is now to lay and operate as aforesaid, and to prepare and make said grade in the center of said street in such condition that the same may be occupied by said Railroad Company, and

Whereas, The said Village has requested the said Railroad Company to remove its tracks, turnouts, switches and sidings from the place they now occupy in said street, to the center of same, and to place and lay suitable flat rails for the tracks of said Railroad in lieu of the "T" rail heretofore and now used on the said branch or extension, and to continue as heretofore to operate said Railroad with all necessary switches, sidings and turnouts now or hereafter required.

315 In *consideration* of the premises, it is mutually agreed by and between the Village of East Cleveland and the said Railroad Company, That within a reasonable time after the execution of this contract the said Village shall proceed to grade and properly prepare the center of said street for the reception of the superstructure of said railroad tracks, switches, turnouts and sidings, and shall pave or macadamize said street, at least forty (40) feet wide including said tracks and shall also pave between said tracks, switches, turnouts and sidings, under the directions and as required by said company. Said *Village further agrees* to and with said Company that it will so grade and pave the same at its own expense and without charge or expense to the Railroad Company and that neither it, nor its successors will at any time during the existence and life of said Company or in case the removal or extension of its Charter shall ever be necessary during the time for which said Company's Charter

shall be so renewed or extended, diminish or control the fare, or charge to be exacted by said Company for conveying passengers over and along said branch or extension on said street between said termini in either direction or for any distance. And said *Village further agrees* to procure and furnsh to said Company, before the reconstruction of said railroad shall begin, at least three-fourths (¾) of the owners of lots abutting on said Euclid street between the termini of said branch or extension, written consents to said Railroad Company to this agreement; the owners also stipulating therein that the written agreement heretofore made with said Company by the said lot owners of their grantors at the time said branch or extension was originally constructed, shall not be thereby impaired or diminished.

It is *further mutually agreed* by and between said parties that said Railroad Company as soon as said grade is so made and constructed as aforesaid, and as said paving or macadamizing is being constructed, shall proceed to remove its Railroad and put down suitable ties and stringers for the reception of said rails, for said road,
316 turn-outs, switches, and sidings, and shall place thereon a suitable flat rail like the rails on Woodland avenue in the City of Cleveland and on Garden street in said City whereon to operate said road in the center of said street. And said Railroad Company *further agrees* that after the space between the said rails has been so paved as aforesaid, to keep the same in repair at its own expense during the continuance of its Charter and existence and during also the time that said Charter may be so extended or renewed as above stated, but at no time to be charged or compelled to pay for the repairing or keeping in repair any portion of said carriage way outside the rails of said tracks, switches, or turnouts, and at no time to be subjected by said Village or its successors, to any other charge or expense.

It is *further mutually agreed* by and between said parties that this instrument shall not be construed or held a surrender or relinquishment by said Railroad Company of any of the rights for franchises held or enjoyed by it prior to the making of this agreement.

This Agreement only to be binding on the parties when it shall have been duly approved and adopted by the Council of said Village and by the said Company and duly signed and sealed by the respective parties hereto.

Witness the hand of the Mayor of said Village and the seal of said Corporation and also the hand of the President of said Company and the seal of the same.

A. EVERETT, [SEAL.]
President, East Cleveland R. R.
JOHN E. HURLBERT, [SEAL.]
Mayor, East Cleveland Village.

Made August 26th, 1870.

317

Euclid Avenue

From Fairmount Street to Rosedale Street.

An ordinance granting permission to certain individuals to construct and operate a street railroad on Euclid Avenue easterly from Fairmount street.

SECTION 1. Be it ordained by the Council of the Incorporated Village of East Cleveland, That permission be and is hereby granted to A. Everett, Charles Wasson and William Collins, and their assigns, to construct and operate a street railroad on Euclid avenue in said Village, from the easterly terminus of the railroad track of the East Cleveland Street Railroad Company at Fairmount street, to the easterly line of said Village.

SECTION 2. That said railroad track shall be laid along the center line of said Euclid Avenue.

SECTION 3. That said railroad track shall be constructed on such grade as may be directed by the Board of Improvements of said Village, and shall be laid with iron rail of the same width as now used by the said East Cleveland Street Railroad Company, and the tracks shall be of the same width as the tracks of the said East Cleveland Railway Company.

SECTION 4. The said Grantees or their assigns, in constructing said railroad, shall place outside of said track and adjacent thereto, such matter as the Board of Improvements may direct to enable vehicles to pass from the wagon roadway on to said tracks without injuring said roadway.

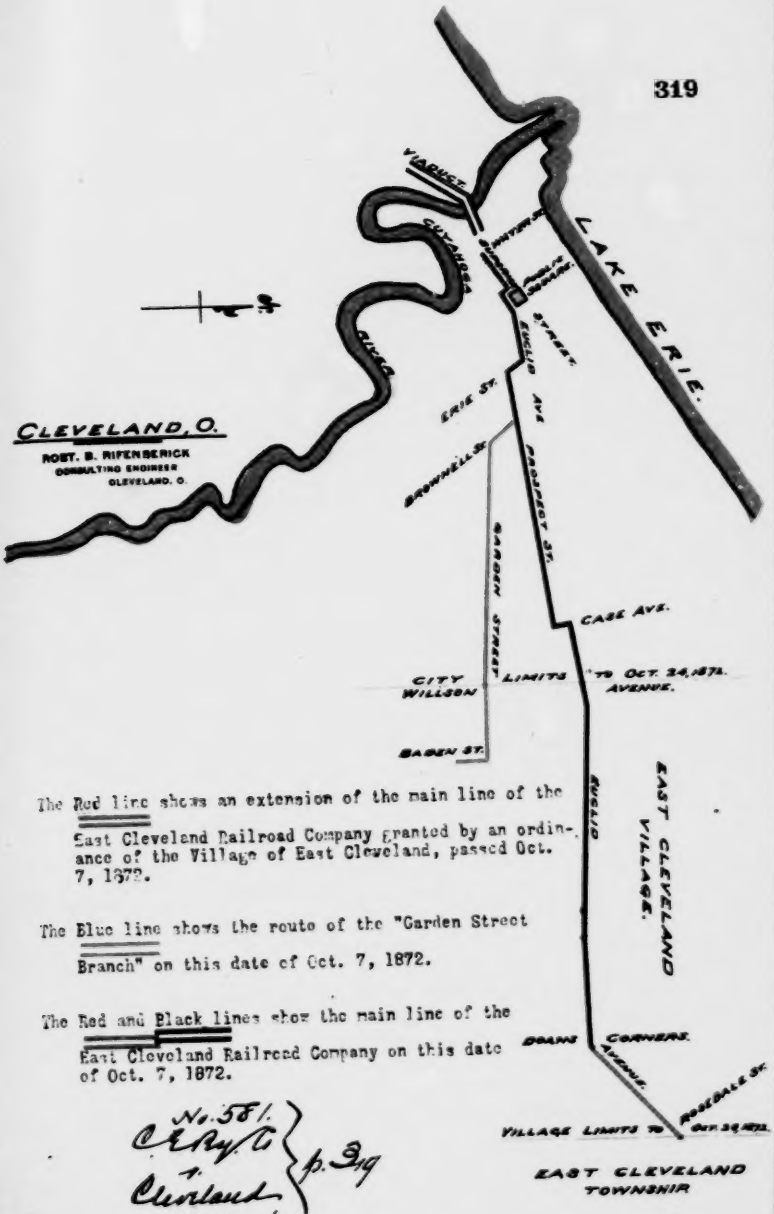
SECTION 5. That said grantees or their assigns construct said railroad and equip and put the same in active operation by the — day of — 1873, or on failure so to do this grant shall become null and void at the option of this Council.

SECTION 6. If said Grantees or their assigns shall at any time for the space of three (3) months fail to reasonably operate said railroad for the accommodation of the public, this grant shall become null and void at the option of this Council.

SECTION 7. That said railroad, for which the grant herein is made, shall be subject to any ordinances, rules, or regulations, which may hereafter be passed, or made by this Council, for the govern-
318 ment of street railroads, or prescribing how they shall be kept, repaired and operated, and subject also to the condition that the owners of property, and the residents on said avenue, between said points, shall be charged but one fare of five cents (5¢) to and from Willson avenue. Yeas 5, nays 0; on motion to suspend the rules, yeas, 5, nays 0; second reading, yeas 5, nays 0; Final Passage, yeas 5, nays 0.

Passed October 7th, 1872.

(Here follows map marked page 319.)

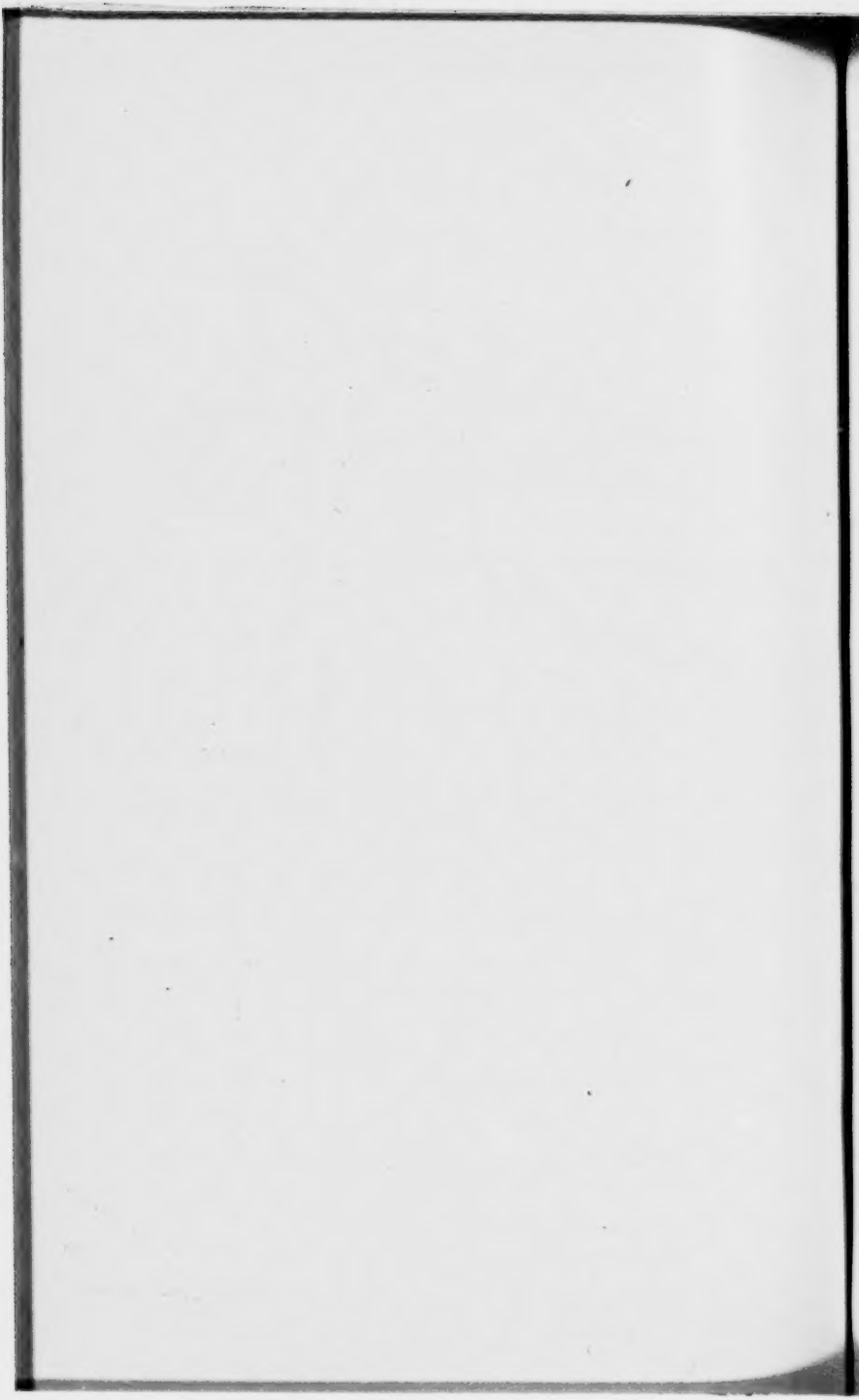


The Red line shows an extension of the main line of the East Cleveland Railroad Company granted by an ordinance of the Village of East Cleveland, passed Oct. 7, 1872.

The Blue line shows the route of the "Garden Street Branch" on this date of Oct. 7, 1872.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of Oct. 7, 1872.

No. 58.
C. Ry. C.
v.
Cleveland
et al.
p. 319



320 *Resolution.*

By Mr. MERCHANT:

Whereas, It appears by the report of the Board of Improvements to this Council this evening, that the owners of a majority of the property, both with reference to value and frontage, on Prospect street between Erie street and Case avenue, on Case avenue and Prospect street and Euclid avenue, and on Euclid avenue between Case and Willson avenues, have given their consent to the East Cleveland Street Railroad Company to lay down a second or a double track in said portions of said streets, therefore,

Resolved, That permission be, and is hereby granted to the said East Cleveland Railroad Company to lay down a double track in Prospect street between Erie street and Case avenue, in Case avenue, between Prospect street and Euclid avenue, and in Euclid avenue between Case and Willson avenues, and upon the following conditions:

Said company shall first put the pavement between the rails of the present single track in as good condition as the pavement in other portions of the street, and shall also put and keep in good condition the pavement between the rails of said double tracks when laid, and to the satisfaction of the Board of Improvements.

2nd. Said company shall lay down for both said tracks the broad rail known as the "five inch tramrail," and do the work under the direction of the City Civil Engineer.

3rd. Said company shall pay for paving between and under the rails of their said track, and shall keep the same and one foot of pavement outside the rails of said track in good repair and to the approval of the Board of Improvements.

321 4th. The space between said double tracks shall not exceed four feet, except in that portion of Prospect street between Sterling and Case avenues the space may be four feet and six inches until said portion of said street is paved, when it shall be made not to exceed four feet.

5th. Said company shall use no salt upon their tracks for the removal of snow from the rails, and all snow thrown from the tracks shall be distributed uniformly over the entire street.

And in the operation of said road said company shall conform with all the laws of the State and the ordinances and resolutions of the City Council.

(Adopted under a suspension of the rules Feb. 25th, 1873.)

Acceptance.

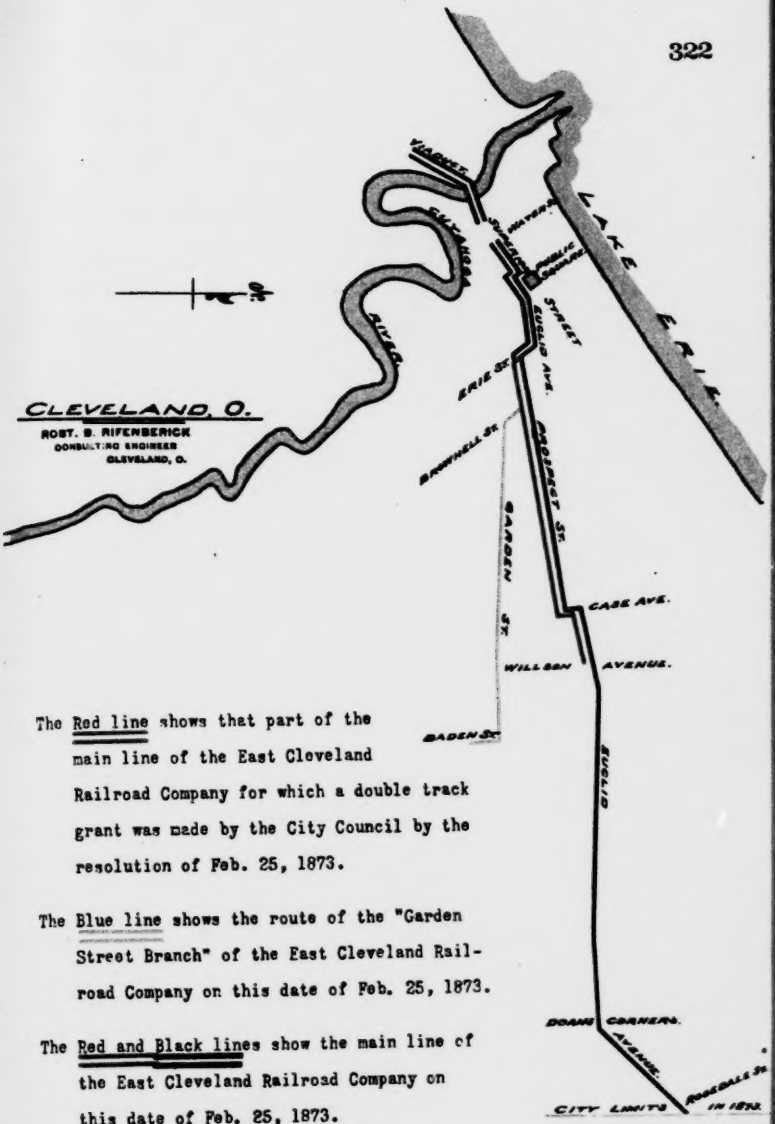
To the Honorable the Council of the City of Cleveland:

At a meeting of the Stockholders of the East Cleveland Railroad Company, held Saturday, March 1st, 1873, the following resolution was adopted:

Resolved, That this Company accept the terms of the Preamble and Resolution of the Council of the City of Cleveland, relating to a second double track on a part of this Company's road, passed February 25th, 1873, and that the President furnish the City Council a copy of this acceptance.

A. EVERETT,
President East Cleveland R. R. Co.

(Here follows map marked page 322.)

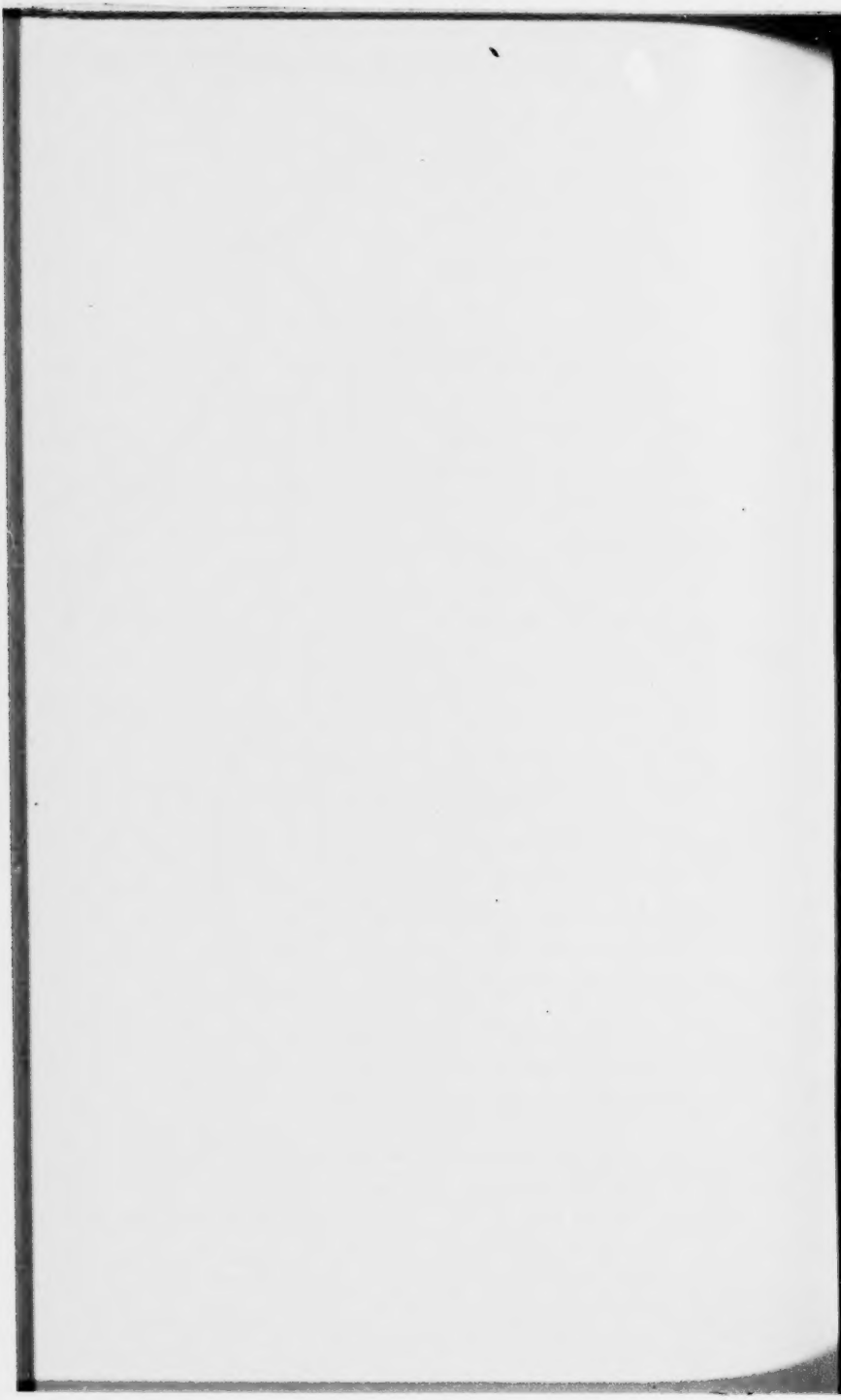


The Red line shows that part of the main line of the East Cleveland Railroad Company for which a double track grant was made by the City Council by the resolution of Feb. 25, 1873.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 25, 1873.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of Feb. 25, 1873.

No. 584 C. Rep. } p. 322
Cleveland



323 *Resolution.*

By Mr. MERCHANT:

Whereas, The East Cleveland Railroad Company desire and propose to connect their Garden street branch with the main line of their road at the intersection of Erie and Prospect streets, by laying double tracks from this point through Erie street to Ohio street, and through Ohio street to Garden street and to remove their track from Brownell street, between Ohio street and Prospect street; and

Whereas, It appears by the report of the Board of Improvements to the City Council this evening, said railroad company have obtained the consent of the owners of a majority of the property, both with respect to valuation and frontage, abutting upon Erie street between Prospect and Ohio streets, and upon Ohio street between Erie and Brownell streets, to lay their tracks through said portions of said street; therefore

Resolved, That permission be and is hereby granted to the East Cleveland Railroad Company to lay a double track street railroad in Ohio street from their present track in Brownell street to Erie street, and in Erie street, from Ohio street to Prospect street, to connect with their main track at this point, and upon the following conditions:

1st. The rail used in both said tracks shall be the five-inch tram rail.

2nd. The Railroad Company, on the completion of said tracks in Erie street between the points above specified, shall pay the owners of property abutting upon said portion of said street, one half of the original cost of so much of the paving as will be included between the rails of each of said tracks, the City Civil Engineer to furnish the Railroad Company a certified list showing the amount due each property owner.

324 3rd. The Railroad Company, in laying their tracks in Erie street shall do as little damage as possible to the paving, and shall keep in as good repair as is the balance of the pavement, the space between the rails of their tracks, and one foot outside the rails. All work shall be done under the direction and to the satisfaction of the Board of Improvements.

4th. That said Company shall, on completion of said tracks in Erie street and Ohio street, take up and remove the present track in Brownell street, from the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them.

5th. All ordinances of the City now in force or that may hereafter be enacted for the government and regulation of street railroads, shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks.

(Adopted under a suspension of the rules, March 25th, 1873.)

325

CITY CLERK'S OFFICE.

The following resolution was adopted by the City Council of the City of Cleveland at their meeting March 25th, 1873.

That permission be and is hereby granted to the East Cleveland Railroad Company to lay a second or double track in Garden street between Brownell street and Willson avenue, in compliance with the prayer of the petition of property owners and upon condition that they use the 5-in. or tram rail upon both of said tracks and that they comply in every respect with all ordinances of the City now in force, or that may hereafter be enacted for the government and regulation of street railroads.

THEO. VOGES,
City Clerk.

Cleveland, March 25th, 1873.

326

Acceptance.

CLEVELAND, OHIO, *March* 29, 1873.

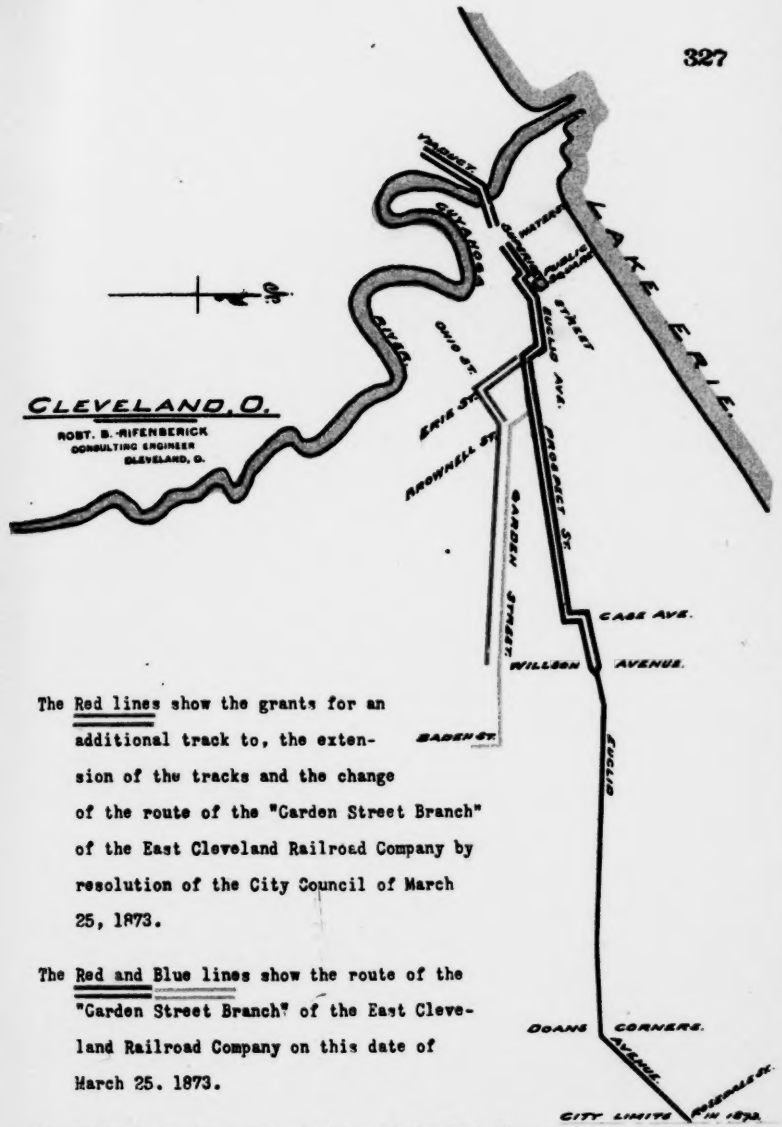
To the Honorable the City Council of Cleveland, Ohio:

At a meeting of the Directors of the East Cleveland Railroad Company held this date, the following resolution was passed:

Resolved, That this Company accept the terms of the resolutions of the Council of the City of Cleveland, adopted March 25th, 1873, relating to a double track on this Company's road in Garden street, between Brownell street and Willson avenue; also relating to a double track in Ohio street from their present track in Brownell street to Erie street, and in Erie street from Ohio street to Prospect street to connect with their main track at this point; and that the President furnish the City Council a copy of this acceptance.

A. EVERETT, *President.*

(Here follows map marked page 327.)

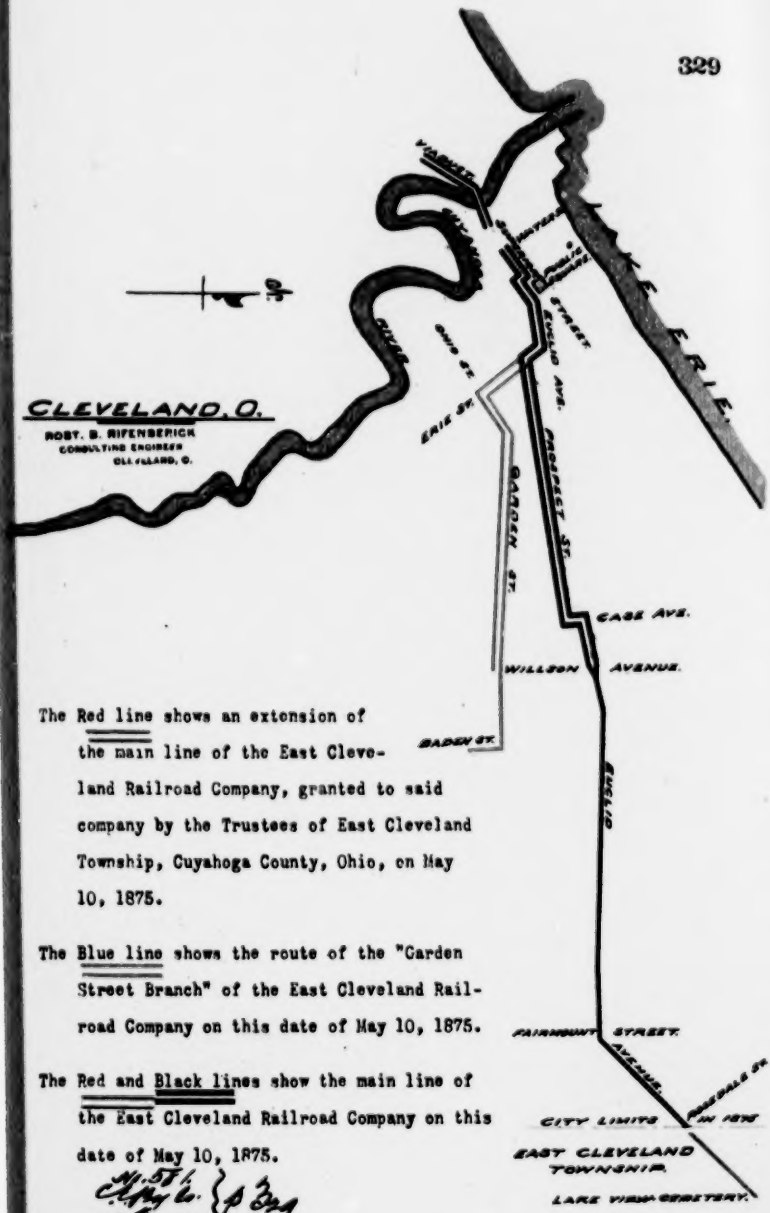


The Red lines show the grants for an additional track to, the extension of the tracks and the change of the route of the "Garden Street Branch" of the East Cleveland Railroad Company by resolution of the City Council of March 25, 1873.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 25. 1873.

The Black line shows the main line of the East Cleveland Railroad Co. on this date of March 25, 1873.

No 54. City & Co. of Cleveland } p. 327



The Red line shows an extension of the main line of the East Cleveland Railroad Company, granted to said company by the Trustees of East Cleveland Township, Cuyahoga County, Ohio, on May 10, 1875.

The Blue line shows the route of the "Carden Street Branch" of the East Cleveland Railroad Company on this date of May 10, 1875.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of May 10, 1875.

M. St. L. Ry Co. } Ass't Eng'r
Cleveland O.

328

Euclid Avenue

From Rosedale Street to Lakeview Cemetery.

To the Trustees of East Cleveland Township.

GENTLEMEN: The undersigned, on behalf of the East Cleveland Railroad Company, respectfully petition your honorable body for permission to construct and operate a street railway on and along the south side of the roadway, commonly called Euclid Road, from the corporation limits of the City of Cleveland (which said limit was formerly the easterly limits of the incorporated village of East Cleveland) to the entrance of Lake View Cemetery; said railroad to be constructed after the most approved method and as an extension of the said East Cleveland Railroad already in operation from said limits westerly into the City of Cleveland aforesaid.

Respectfully,

A. EVERETT,
Pres. E. C. R. R. Co., for said Company.

May 10th, 1875.

EAST CLEVELAND, O., *May* 10, 1875.

We, the undersigned, Trustees of East Cleveland Township, hereby grant to the East Cleveland Street Railroad Company, the full right to construct a street railway in accordance with the above petition.

L. F. BEERS,
JOSEPH ARMOR,
M. MINOR,
Township Trustees.

(Here follows map marked page 329.)

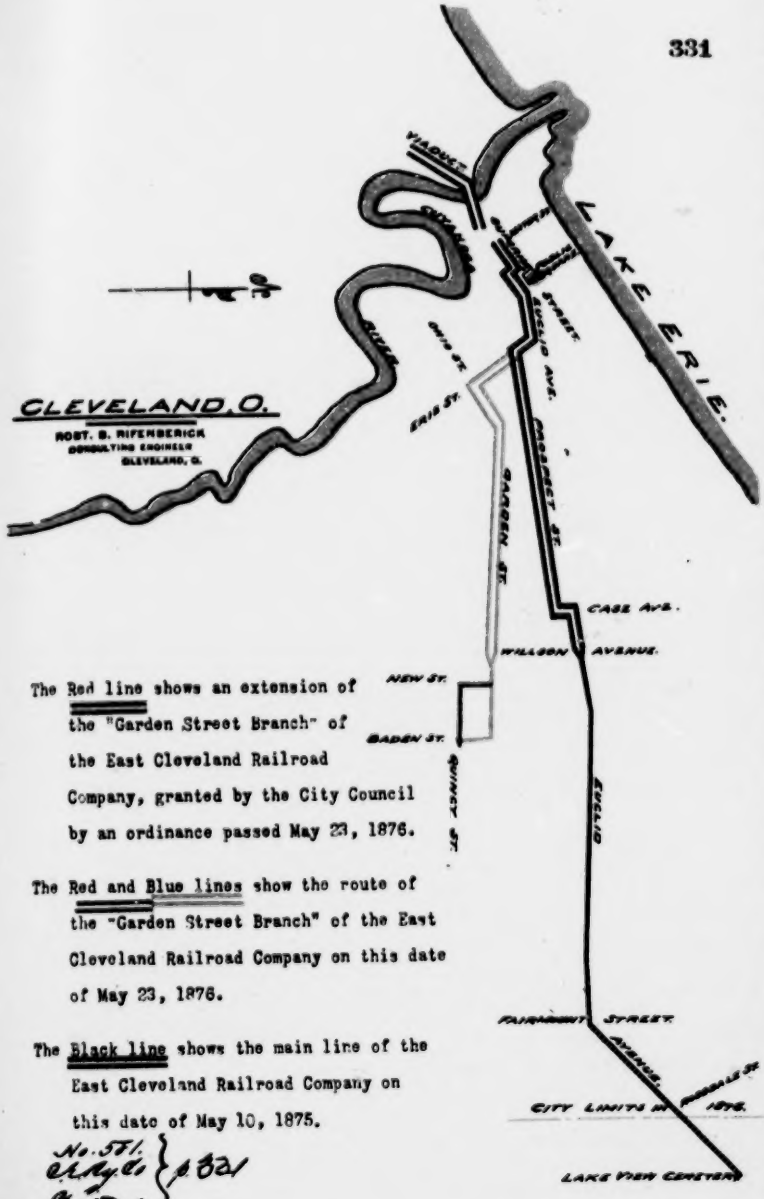
330 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its road.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its road to the easterly end thereof, along Garden street to Baden avenue, and along Baden avenue to Quincy street, and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track; and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch or of its main line, or of said extension by reason of said extension. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed, regulating street railroads.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication.

Passed May 23, 1876.

(Here follows map marked page 331.)



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed May 23, 1876.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of May 23, 1876.

The Black line shows the main line of the East Cleveland Railroad Company on this date of May 10, 1875.

No. 571
E.Cl.Ry.Co.
Cleveland, O.
$ 821

332 *Petition for Renewal of Franchise.*

To the Honorable the City Council:

The undersigned for an- on behalf of the East Cleveland Railroad Company, an incorporated company, hereby petition your Honorable Body for a renewal of the grant and license heretofore made and issued to said company for the use and occupancy of the several streets in and through which said company's tracks are now laid and its said road is now operated.

Your petitioners represent that said original grant was for the period of twenty (20) years, as then fixed by law, and by the provisions of a general ordinance passed September 20th, 1859.

That at the time when said road was first constructed the population on and along Prospect street was very sparse, there not being a single dwelling thereon between Case and Willson avenues, nor upon the south side of Euclid avenue between said points, and but three or four on the north side thereof, and only a few residences on its extension to East Cleveland Village.

The facilities thus early furnished by this company in the construction of the pioneer line of street railroads has resulted in populating a vast territory and greatly increasing the wealth and taxable property of the eastern part of the city.

The financial history of the road for the first eight (8) years was without encouragement, as it earned no dividend; afterwards for a few years, from five to eight per cent. was earned and divided. For the last six (6) years, probably the most favorable years known since the road was built, on account of prevailing low prices
333 of feed, and almost everything used or consumed in the operation of a street railroad, its management has succeeded in returning to its stockholders a dividend of ten (10%) per cent. on the capital invested, a percentage still too small for investments in this class of property, for while the company has been thus far so fortunate as to escape any serious calamity either to person or property yet it is liable at any moment to an accident which will sweep away its earnings for a year.

The sum total paid to stock-holders in the twenty (20) years would not average to exceed four (4%) per cent. per annum.

The company sustains in the operation of its road a large retinue of men who have families, and its annual outlay for stock and supplies is very large, all of which as well as the dividends are paid to our own citizens, and in later years it has, in pursuance of the requirements of the city, expended over $100,000.00 in paving the streets along its line.

The company has also, during its existence promptly complied with every ordinance, resolution or request of the City Council, and has discharged its every money obligation to the city, when due, and without suit, to the present time.

It has been the policy of the company to create and maintain a first class line of road such as its patrons require and such as they are entitled to have, and the managers submit that the few com-

plaints of citizens through a series of years is evidence of a fair degree of public satisfaction.

Therefore, the undersigned prays that such grant of renewal and license be made to said company for the term of twenty-five (25) years from and after the 20th day of September, 1879, as now authorized by law, subject, however, to the present ordinances of the city relating to street railroads and future legal requirements.

Respectfully, etc. A. EVERETT,

President East Cleveland R. R. Co.

Received Sept. 8th, 1879.

334 An Ordinance granting a renewal of franchise to the East Cleveland Railroad Company to construct, maintain and operate its street railroad in and through certain streets of the City of Cleveland.

Whereas, The Legislature of the State of Ohio did, on the 12th day of June, 1879, pass an act entitled "An act to amend section 4 and 5 of chapter 5 of division 8 of the act entitled an act to amend, revise and consolidate the statutes relating to municipal corporations, to be known as title 12 part 1 of the act to revise and consolidate the general statutes of Ohio," passed May 14, 1878, in which act it is recited among other provisions, relating to grants and permits for the use of streets for the purpose of constructing and operating street railroads therein, and for the renewal of grants heretofore made to individuals, companies or corporations, that the Council of "any city of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interest;" and

Whereas, The East Cleveland Railroad Company, a corporation existing under the laws of Ohio, and now and heretofore operating a street railroad in and through certain streets of the City of Cleveland, under and by virtue of a grant and permit previously obtained, has made application in writing for a renewal of such grant and permit to maintain and operate its said street railroad in and along the streets, as heretofore, and now located and operated for the period of twenty-five years from and after the 20th of September, 1879, therefore

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors and assigns, be and the same are hereby authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turn-outs, and turn-tables as heretofore constructed and now maintained and operated in the City of Cleveland, commencing on Superior street at the intersection of Water street; thence through Superior street to and around the southwest corner of Monumental Square to Euclid avenue; thence through said avenue to Erie street; thence through said Erie street to Pros-
335 pect street; thence through said Prospect street to Case avenue; thence through said Case avenue to Euclid avenue; thence through and along said Euclid avenue to Willson avenue, subject to the following conditions and limitations, to wit:

SECTION 2. All tracks hereafter laid by the said company to be of the same guage as heretofore and now existing, and the rails of the same patterns as now laid and used on said road, with suitable gutters at all necessary points, so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the Council, for the purpose of regrading said streets, constructing sewers, laying water or gas pipes therein, at the expense of the company.

SECTION 3. Whenever it shall be deemed necessary to grade, pave and improve any streets wherein said tracks are laid, the company shall be required to pave any part or all of the track between the rails with gravel, stone or other pavement as the Council may deem proper; and if said company, after reasonable notice shall fail to do such paving at the same time that any such street or streets are being so improved by said city, or at the time named in such notice, then said city may do such paving and assess the cost of such paving against said company in the same ordinance with the property owners on said street, or by a separate ordinance, and may collect the amount thereof by suit or otherwise according to law. And said company is also required to keep such pavement in constant good order; said paving and repairing to be done under the direction of and to the acceptance of the Board of Improvements.

SECTION 4. Said company is hereby required to keep clean and free from dirt so much of its roadway in said street as may be occupied by its said tracks and turn-outs and said company shall cause the dirt or street cleanings to be removed or placed in heaps
336 in such manner as not to interfere with the free use of the streets by the public; and in all cases when it becomes necessary to remove snow or ice from the said tracks, it shall be distributed evenly over the surface of the balance of the street, so as not to interfere with the free use and the occupancy of the same by the public.

SECTION 5. Said company shall place and continue on said railroad good cars with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon as the public convenience may require, under such directions as the City Council may from time to time prescribe.

SECTION 6. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages; the Council, however reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient.

SECTION 7. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damage to it arising from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or from any delay or damage that may be caused by fire or otherwise. All rights vested in the City Council, the Trustees of Water Works, or Gas Company, in respect to the care and improvement of streets, the con-

struction of sewer, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company by virtue of this ordinance, shall be subject thereto; and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the manage-
337 ment, construction, or use of said railroad, and the said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by the reason thereof, or by running the cars thereon.

SECTION 8. And be it further ordained, That the following specifications are hereby required by the Council in the running of said company's cars:

1. While the cars are turning the corners from one street to another, the horses shall not be driven faster than a walk.

2. The rate of speed of all cars shall be subject to the direction of the City Council from time to time.

3. No car shall be allowed to stop on a crosswalk, nor in front of any intersecting street, except to avoid collisions or to prevent danger to persons in the street; nor shall any car be left or remain standing in any street at any time unless the same is attached to a team and waiting for passengers.

4. When the conductor of any car is required to stop at the intersection of streets, to receive or to leave passengers, the car shall be stopped so as to leave the rear platform over the crossing.

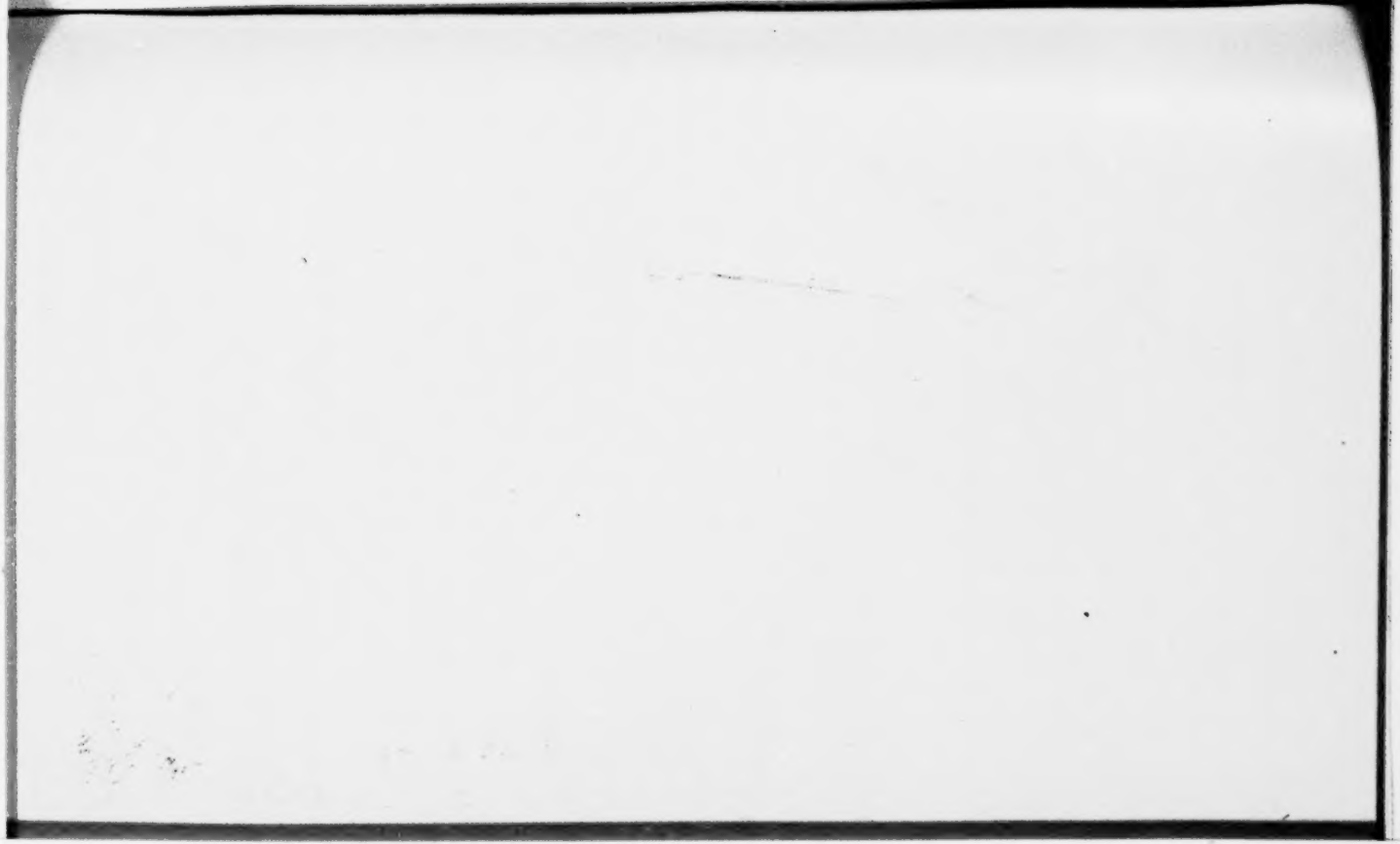
5. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving toward it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

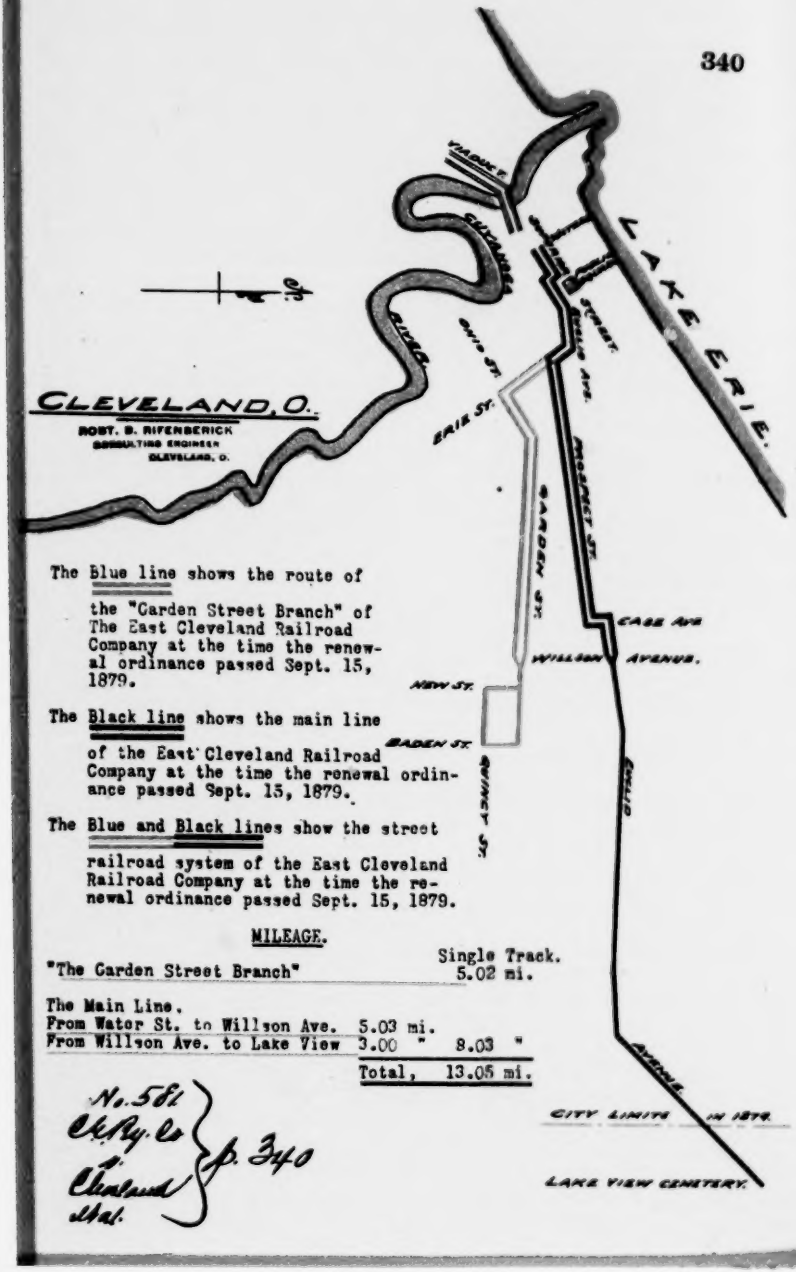
6. The conductors shall not allow ladies or children to enter or leave the cars while in motion.

7. Conductors shall announce to the passengers the names of the streets or places or wherever the cars cross in connection with any other railway track.

338 8. The cars, after sunset, shall be provided with signal lights, and each team shall at all times have a bell attached to some portion of the horses.

SECTION 9. The cars of said company shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the Police Court, and costs of prosecution; and all fines collected under this section shall be paid into the City Treasury, to the credit of the Street Fund; Provided, That if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the





The Blue line shows the route of the "Garden Street Branch" of The East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

The Black line shows the main line of the East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

The Blue and Black lines show the street railroad system of the East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

MILEAGE.

	Single Track.
"The Garden Street Branch"	5.02 mi.

The Main Line.

From Water St. to Willson Ave.	5.03 mi.	
From Willson Ave. to Lake View	3.00 "	8.03 "
	Total,	13.05 mi.

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Cl. Ry. Co
Cleveland
Mal.
p. 340

penalty attached by this section; Provided, That such person or persons shall have first obtained the consent of the Board of City Improvements for such removal.

SECTION 10. Said company shall be required to pay to the City of Cleveland an annual license of ten dollars for each car running on this railroad.

SECTION 11. The Council hereby reserve the right to grant to any other company, corporation or individual the joint uses of the tracks of the said East Cleveland Railroad Company herein described and provided for in any and all of said streets, upon such terms and conditions as the Council shall deem just and equitable; Provided, That this reservation east of Erie street, on said road, is a reservation for, and solely for and limited to, such reasonable use of said company's tracks as may be necessary for the use of cross town lines—not parallel lines—which may hereafter be constructed, and not for the purpose of reser ing the joint use of said tracks with other lines of road which may desire to run thereon.

SECTION 12. The authority and privileges in this ordinance
339 named and provided for are to be *an* remain in force for the full period of twenty-five years from the 20th day of September, 1879; the said company, its successors and assigns, performing the several conditions of this ordinance required.

SECTION 13. That in case of failure, by neglect or otherwise, on the part of the said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the general ordinance and the future ordinances of the City in relation to said road, the privileges hereby granted and renewed shall become void and of no effect, and shall cease upon the adoption of a resolution of Council to that effect.

SECTION 14. The franchise herein mentioned is granted on the condition that the Council shall have the same power to regulate the fares to be charged on the road operated by said East Cleveland Railroad Company east of Willson avenue, and to regulate the operation of said last named portion of said road that is herein provided for as the portion west of Willson avenue, leaving the contract made between said company and the village of East Cleveland unaffected in all other respects.

Passed September 15, 1879.

(Here follows map marked page 340.)

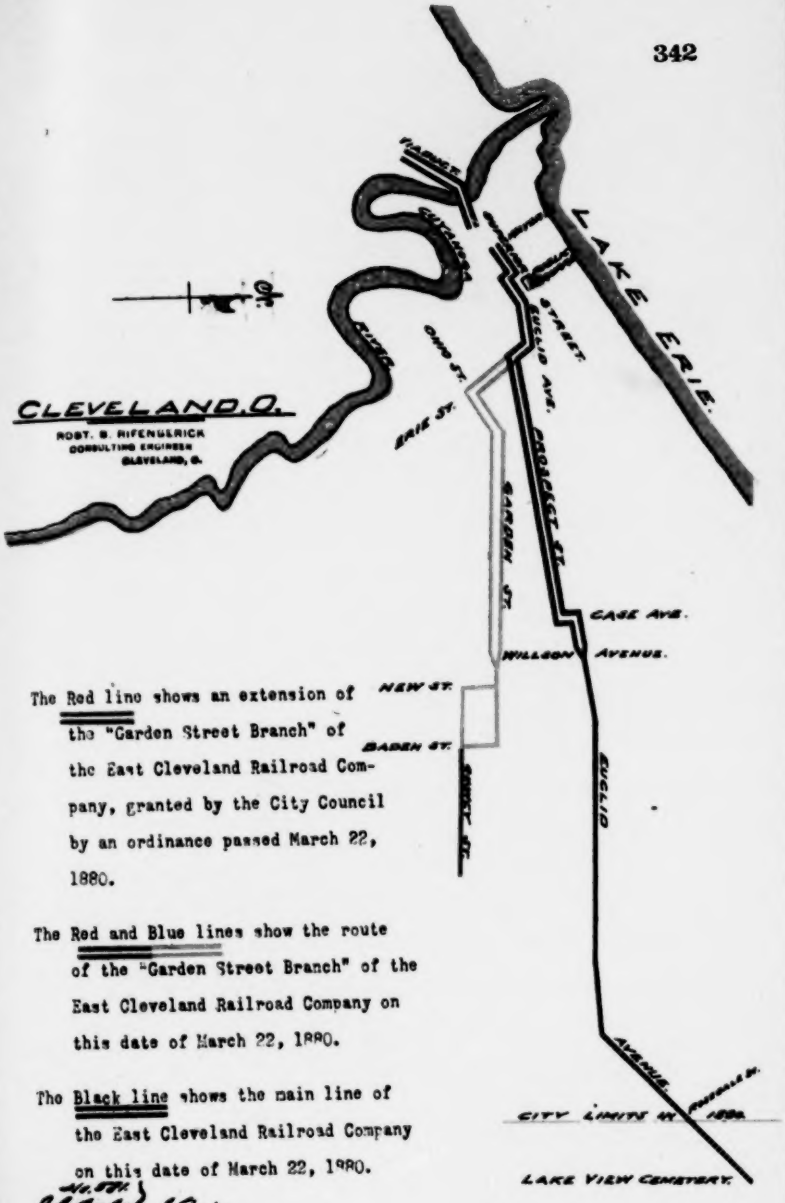
341 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway from the present track, at the intersection of Baden avenue and Quincy street, in an easterly direction on and along said Quincy street, to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for the period of twenty-five (25) years from and after the passage of this ordinance; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch, or of its main line, or of said extention by reason of said extention. This grant is made subject to all ordinances of said City Council now in force, or which may hereafter be duly passed regulating street railroads.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication.

Passed March 22, 1880.

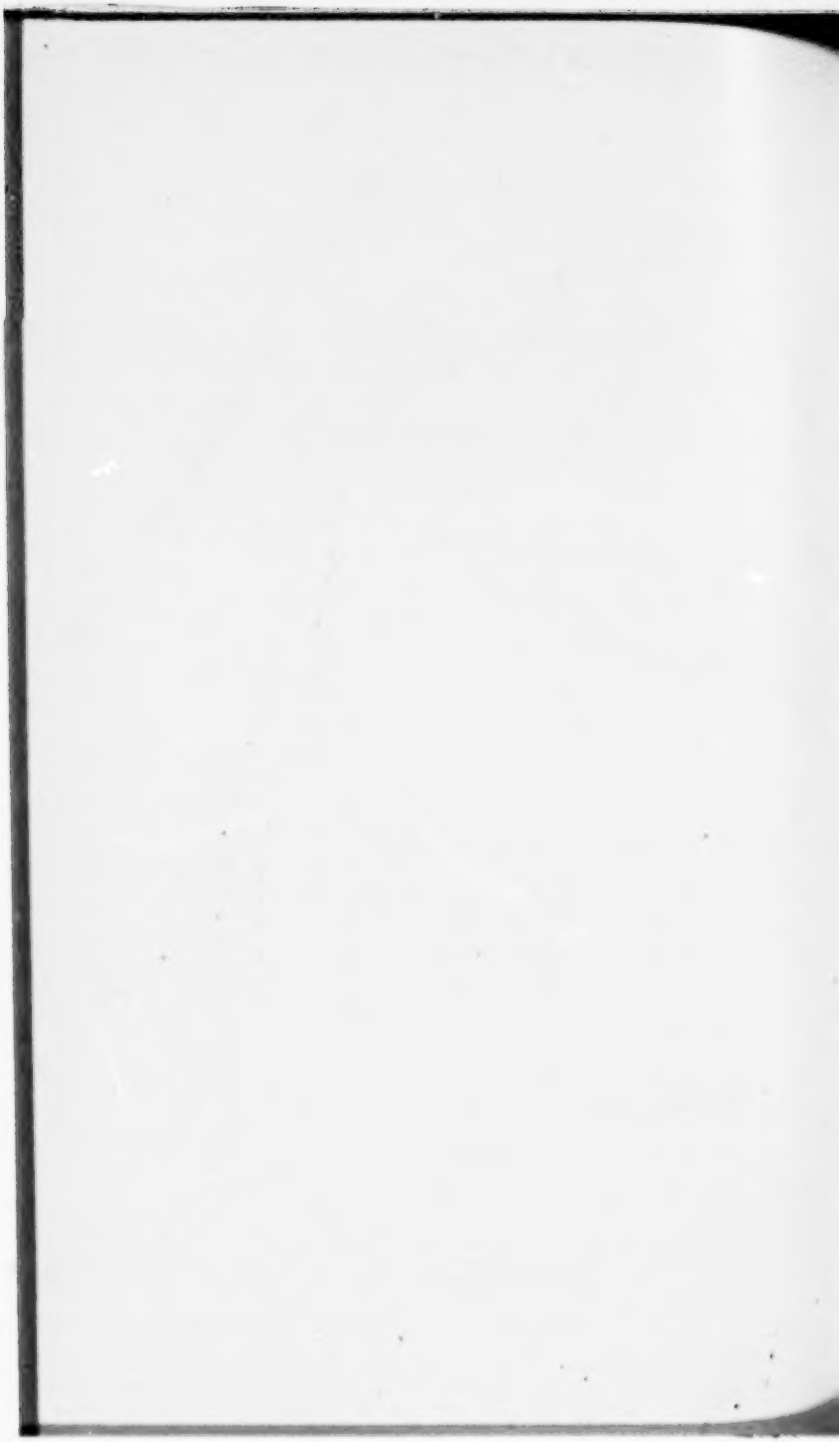
(Here follows map marked page 342.)



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed March 22, 1880.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 22, 1880.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 22, 1880.



343 An ordinance granting to the East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid avenue from the west line of Willson avenue to the west line of Fairmount street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company is hereby granted the right to extend, lay and operate its double track on Euclid avenue from the west line of Willson avenue to the east line of Fairmount street upon *the terms and conditions hereinafter* expressed.

SECTION 2. That said double track shall be so constructed and laid as to leave an equal space between the outer rails of each track and the lines of curbstones on either side of said avenue, and be laid to such grades, and such distance apart, and at such times as shall be directed by the Board of Improvements; and the spaces between the outside rails of the two tracks shall be paved with Medina, N. Y., dressed block sandstone, laid in the same manner as is laid in the street railroad tracks on Prospect street, between Sterling and Case avenues, and the said double track shall be managed and conducted in compliance with and subject to all other ordinances now in force, or which shall be hereafter passed, governing street railroad companies in the City of Cleveland.

SECTION 3. The right herein given is granted upon the express condition, however, that said company shall charge but one fare of not more than five cents for each passenger, between the westerly terminus of said company's road on Superior street, and the city limits, the company shall run through cars at least once every ten minutes during the hours of 6 A. M. and 8 P. M. and that the right of said company to have and operate its said railroad on said Euclid avenue, between the west line of Willson avenue and the city limits, shall terminate on the twentieth day of September, A. D. 1904, with the said renewal of that part of said company's line lying west of said Willson avenue.

344 SECTION 4. That the Council reserves to itself the right to hereafter increase or diminish the rate of fare between the west end of its, said company's, lines in Superior street and the city limits as it may deem justifiable and expedient, and that said company may be required to keep in order the pavement and roadway ten feet in width along its track and the cross-walks to the full width of the streets through which said road passes, under direction of the Street Commissioner.

SECTION 5. That this ordinance shall be in force from and after its passage and legal publication.

Passed April 4, 1883.

345 *Acceptance from the East Cleveland Railroad Company.*

Office of the East Cleveland Railroad Company, #1177 Euclid Avenue.

CLEVELAND, OHIO, *April* 16, 1883.

To the Honorable City Council of the City of Cleveland.

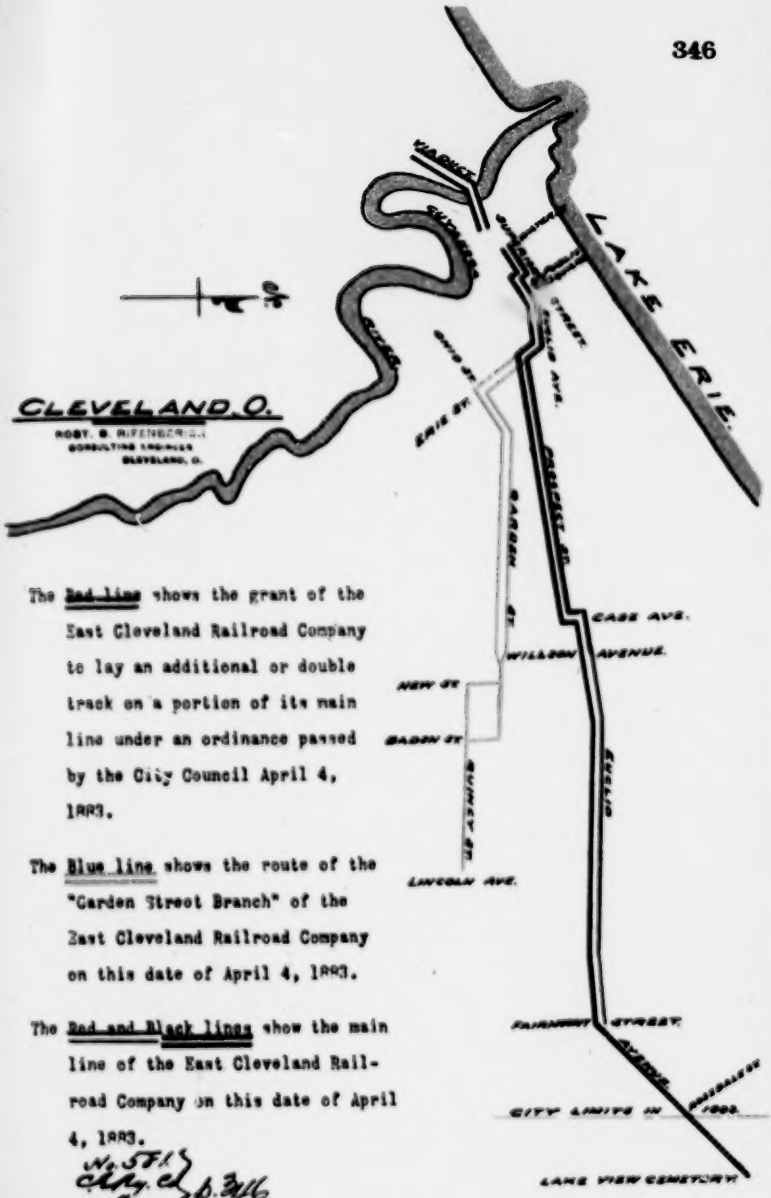
GENTLEMEN: The East Cleveland Railroad Company hereby makes it known to your Honorable Body that it has and does hereby accept the rights and privileges granted it by an ordinance passed on the 4th day of April, A. D., 1883, entitled "An ordinance granting to the East Cleveland Railroad Company the right to extend, lay, and operate its double track in Euclid Avenue, from the west line of Willson Avenue to the east line of Fairmount street."

Respectfully submitted,

THE EAST CLEVELAND R. R. COMPANY,
By A. EVERETT, *President.*

Received April 16th, 1883.

(Here follows map marked page 346.)

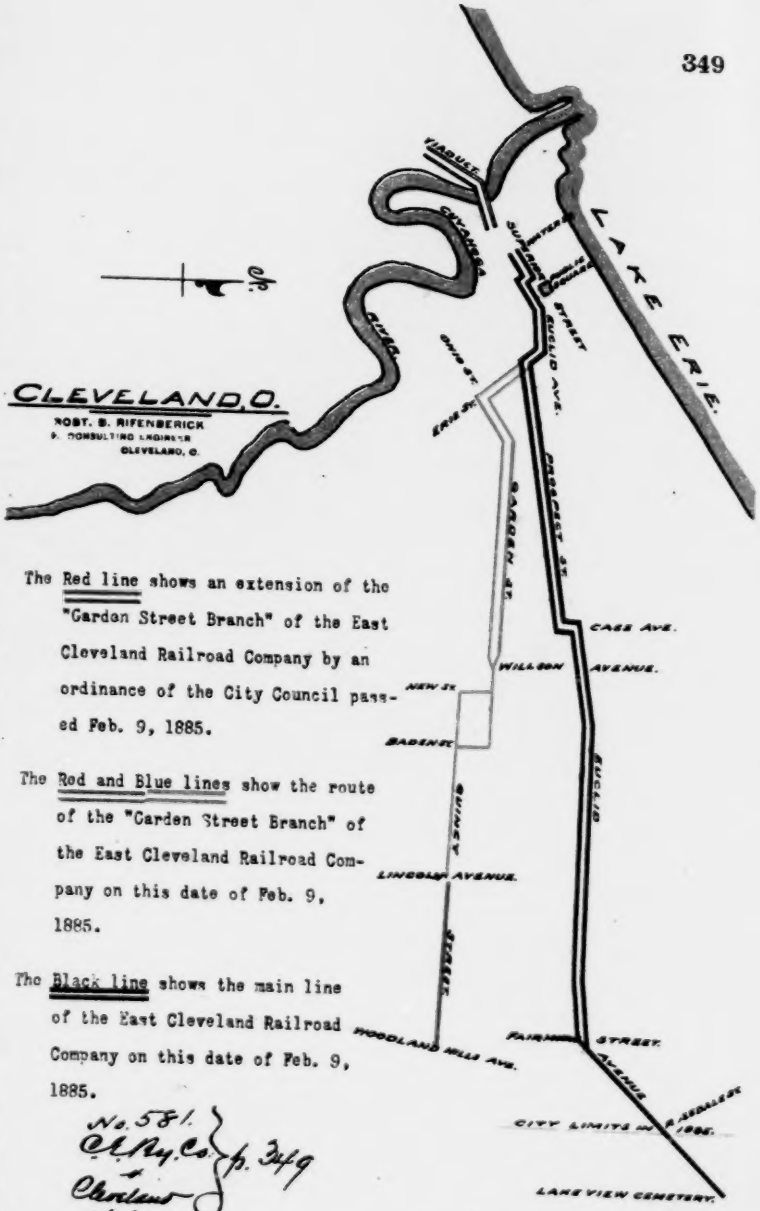


The Red line shows the grant of the East Cleveland Railroad Company to lay an additional or double track on a portion of its main line under an ordinance passed by the City Council April 4, 1883.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of April 4, 1883.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of April 4, 1883.

No. 5 F 1 3
City Cl. p. 346
Cleveland
Ohio



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company by an ordinance of the City Council passed Feb. 9, 1885.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

The Black line shows the main line of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

No. 581.
E. Cl. Ry. Co.
to
Cleveland
et al.
} p. 349

AND TERMINATING WITH THE GRANT FOR THE MAIN LINE,

347 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway, from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad, with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension with such material and in such manner as the Board of Improvements may direct, and keep the same in constant good repair at the expense of said company. The entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer and in operation within six months after the passage of this ordinance. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads and amendments to this ordinance.

SECTION 2. Whenever the City Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Quincy street, said company shall take up and relay said tracks at its own expense whenever so ordered by the Board of Improvements and shall do the work of grading or regrading, paving or repaving, or pay to the City the cost of the same at the city's option,
348 of the space between the rails of each and all its tracks, switches, and turn-outs unless in the judgment of the Board of Improvements the pavement in said track at such time shall be at the proper grade and in sufficient good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication and the payment by the company of the expense of printing and publishing the same and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed February 9, 1885.

Acceptance.

CLEVELAND, OHIO, *Feb. 12th,* 1885.

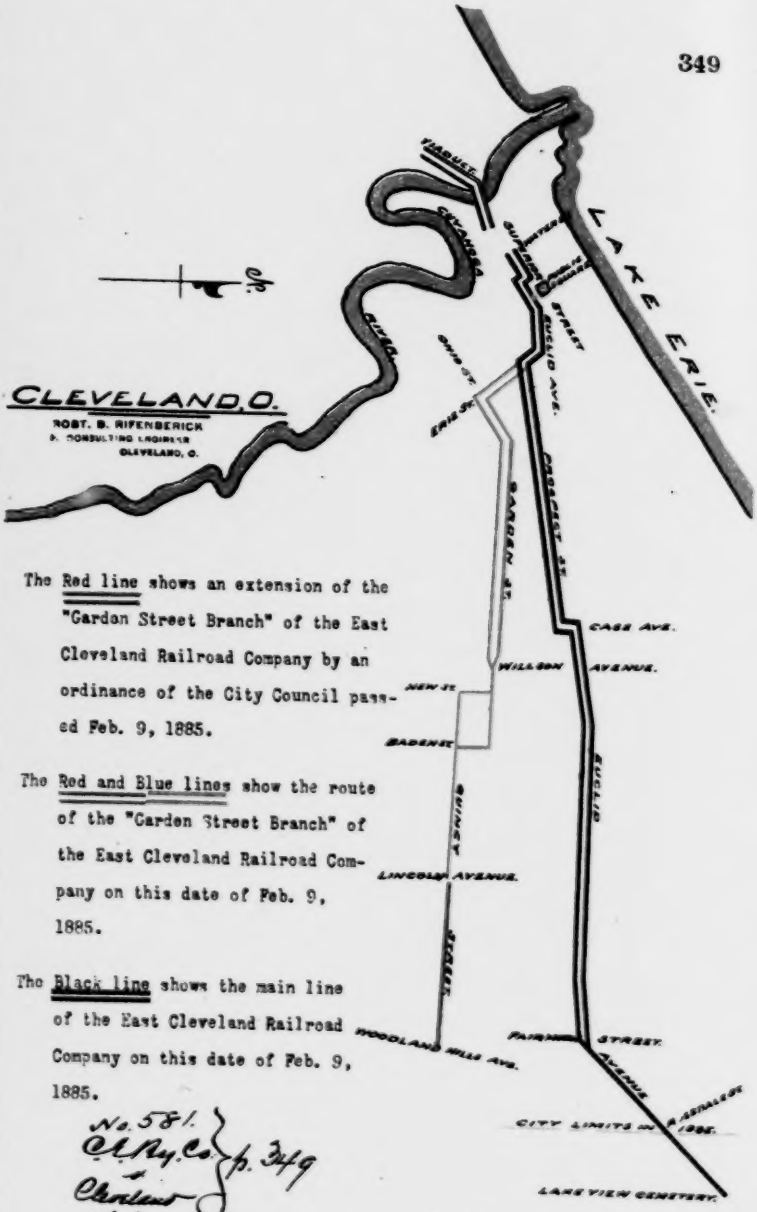
To the Honorable the City Council of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of Ordinance No. 274, passed by your Honorable Body on Monday, February 9th, 1885.

Very respectfully,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Received Feb. 16th, 1885.



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company by an ordinance of the City Council passed Feb. 9, 1885.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

The Black line shows the main line of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

No. 581.
C. I. Ry. Co. } p. 349
Cleveland
Ohio

347 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway, from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad, with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension with such material and in such manner as the Board of Improvements may direct, and keep the same in constant good repair at the expense of said company. The entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer and in operation within six months after the passage of this ordinance. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads and amendments to this ordinance.

SECTION 2. Whenever the City Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Quincy street, said company shall take up and relay said tracks at its own expense whenever so ordered by the Board of Improvements and shall do the work of grading or regrading, paving or repaving, or pay to the City the cost of the same at the city's option,
348 of the space between the rails of each and all its tracks, switches, and turn-outs unless in the judgment of the Board of Improvements the pavement in said track at such time shall be at the proper grade and in sufficient good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication and the payment by the company of the expense of printing and publishing the same and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed February 9, 1885.

Acceptance.

CLEVELAND, OHIO, *Feb. 12th,* 1885.

To the Honorable the City Council of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of Ordinance No. 274, passed by your Honorable Body on Monday, February 9th, 1885.

Very respectfully,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Received Feb. 16th, 1885.

(Here follows map marked page 349.)

350 *An Ordinance.*

An ordinance granting to the East Cleveland Railroad Company the right to extend and operate its double track street railroad in Euclid avenue, between the easterly line of Fairmount street and the easterly limits of the city.

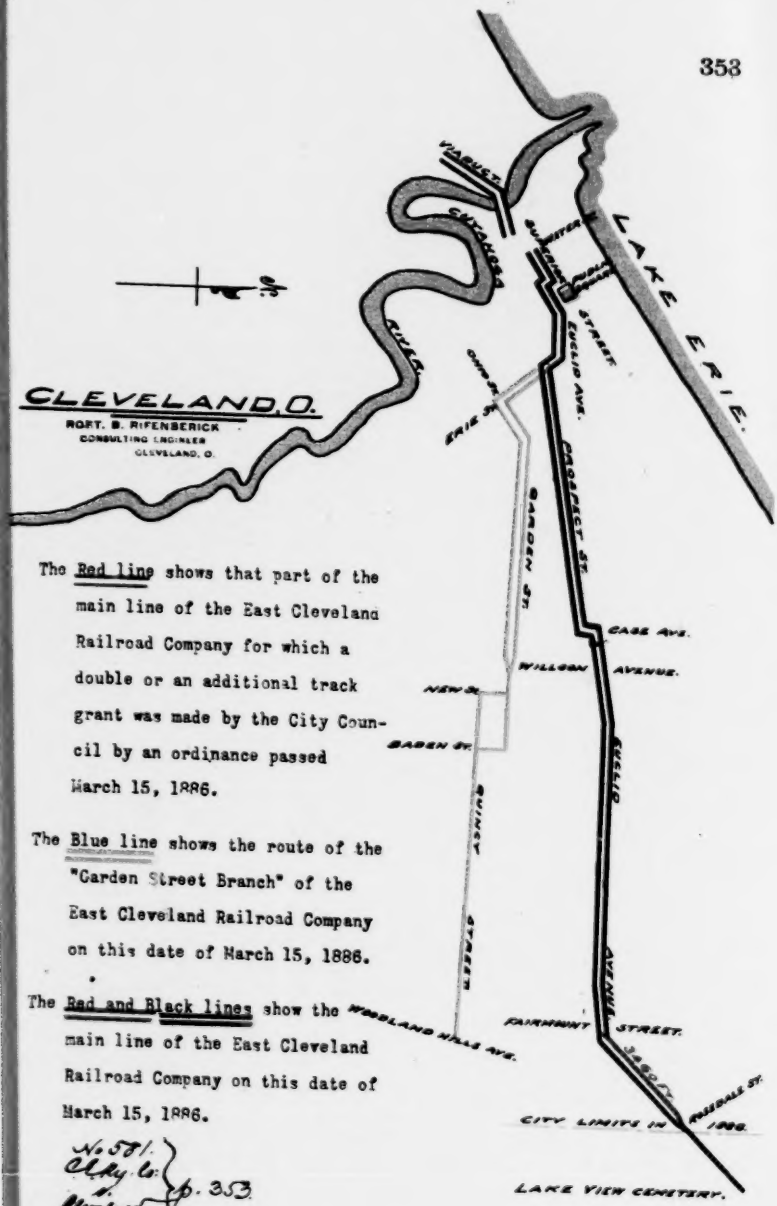
SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby granted the right to extend, lay and operate its double track street railroad from the easterly line of Fairmount street to the easterly limits of the city, upon the terms and conditions herein specified.

SECTION 2. That said track shall be constructed in a thorough and substantial manner, four (4) feet apart, along the center of said avenue, between the said points, the center line of the four foot space to be on the center line of Euclid avenue, and to be laid in such manner, to such grades, and at such time as the Board of Improvements shall direct.

SECTION 3. That the spaces between the rails of each track, together with the spaces between the tracks, shall be paved with broken or split boulders, laid with broken face up, and the spaces between the boulders filled with asphaltic cement, as specified by the city for dressed block stone paving, the said boulder paving to be done at the expense of sail railroad company, and at the same time as the balance of said roadway is paved, the material, manner of construction and workmanship to be subject to the direction and approval of the Board of Improvements. The said boulder pavement shall be kept in constant good repair by said company, to the acceptance of said board. Said railroad company shall grade the space of fourteen (14) feet wide from outside to outside of its rails, also at its own expense. Said double track, when completed, shall be managed and conducted at all times subject to the conditions of this ordinance, and any amendments hereto, and all ordinances now in force and that may be hereafter passed, governing street railroads, so far as the same are applicable.

351 SECTION 4. That the rights, as herein granted and conferred, are upon the express conditions, however, that said company shall charge and collect but one fare of not more than five (5) cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue, and the westerly terminus of said company's tracks at the intersection of Superior and Bank streets; and upon the further condition that said company shall run through cars over said line between said points last named in each direction, as the public convenience in the opinion of the Common Council, by resolution expressed, may require.

SECTION 5. That the rights herein granted to lay and operate a double track street railroad in Euclid avenue, between Fairmount street and the easterly limits of the city, shall cease and terminate upon the 20th day of September, A. D. 1904, as provided for said company's tracks in Euclid avenue, west of Fairmount street.



The Red line shows that part of the main line of the East Cleveland Railroad Company for which a double or an additional track grant was made by the City Council by an ordinance passed March 15, 1886.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 15, 1886.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of March 15, 1886.

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p. 353

SECTION 6. That said railroad company shall reimburse the city after the completion of said work, the cost of all engineering done by said city in the construction of said tracks and boulder pavement.

SECTION 7. That said company shall, within thirty days after the passage of this ordinance, file with the City Clerk, a copy of a resolution of said company accepting the terms and conditions hereof, and pay into the City Treasury the cost of printing and publishing this ordinance, otherwise the rights herein granted shall be forfeited and void.

SECTION 8. That this ordinance shall be in force from and after its passage and legal publication.

Passed by the Common Council March 15, 1886.

352 *Acceptance.*

CLEVELAND, OHIO, *March* 29, 1886.

To the Honorable the Common Council of the City of Cleveland:

GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. [illegible]ssed by your Honorable Body on the 15th inst. entitled "A[illegible]ce granting to the East Cleveland Railroad Company the [illegible] extend and operate its double-track street railroad in Euclid [illegible]nue between the easterly line of Fairmount street and the easterly limits of the city."

Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*

Received March 29th, 1886.

(Here follows diagram marked page 353.)

354 *Ordinance No. 85.*

An Ordinance to permit the East Cleveland Railroad Company and Brooklyn Street Railroad Company to extend their tracks and operate their railroads on Water, Lake and Bank Streets.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company and the Brooklyn Street Railroad Company be and they are hereby authorized and empowered to extend their tracks and lines of railroad from their line northerly on and along Water street, to its intersection with Lake street; thence easterly on and along said Lake street to its intersection with Bank street; thence southerly on and along Bank street to Superior street, and making a junction with their said line in Superior street; and to equip and operate said extension as a double track railroad, with all necessary switches and turn-outs, in connection with their main lines.

SECTION 2. The said extension shall be operated so that all cars run thereon shall be kept moving in a continuous circuit in connection with their main lines except when stopping to take on or leave off passengers or for other necessary purposes.

SECTION 3. That this grant is made subject to all and singular the terms and conditions of the ordinance under which each of said companies is now operating, or any amendments hereto or thereto, and of the general street railroad ordinance of the city now or hereafter in force, or amendments thereto, and in case af failure or neglect or otherwise on the part of said East Cleveland Railroad Company and Brooklyn Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, or amendments hereto, the privilege hereby granted shall become void and of no effect, and shall cease upon the adoption of an ordinance of the Common Council to that effect.

355 SECTION 4. This grant is given on the express condition that no additional fare shall be charged by the said companies by reason of said extension, and shall expire on the part of each company with the grant for its main line respectively.

SECTION 5. That the city reserves the right to grant the joint use of all or any portion of the tracks laid or used in said extension to any company or companies upon such terms as to compensation as may be mutually agreed upon by such company or companies, and the companies owning tracks of said extension or as the Common Council shall determine to be just and equitable in the event of failure of said companies so to agree; Provided, That the East Cleveland Railroad Company and the Brooklyn Street Railroad Company and any company availing itself of the right to a joint use of the track of the extension herein described, shall, between the hours of six twenty o'clock a. m. and nine o'clock p. m. of each day, cause at least one car of its main line to be run over such extension as often as once in every ten minutes.

SECTION 6. That said extension shall be constructed, equipped, and operated within sixty days from the date of the passage of this ordinance. In laying and completing the tracks of said extension in Water and Bank streets and the connection with other tracks, the paving taken up shall be relaid in a workmanlike manner, to the entire satisfaction of the Board of Improvements, and all stone that may be required to make up any deficiency shall be of the same quality as the balance of the paving, and the tracks of that portion of said extension in Lake street shall be laid by said companies at such times during or in advance of the paving of Lake street, as now contemplated as the Board of Improvements may direct, and the work of paving between the rails of said tracks in Lake street shall be done by the city under and in accordance with the contemplated contract for paving Lake street from Water to Ontario streets, and said East Cleveland Railroad Company, and Brooklyn Street Railroad Company shall pay to the City Treasurer immediately after the completion of the paving between the rails of the tracks
356 in Lake Street and before any cars run thereon, the cost as fixed by the Board of Improvements of the said paving between the rails of the tracks in Lake street or so much of the cost thereof as is not waived by the abutting property owners. Also the said East Cleveland Railroad Company, and Brooklyn Street Railroad Company shall pay to the city at the same time the extra cost as fixed by the Board of Improvements of paving Lake street between Water and Bank streets as now contemplated by reason of laying of said tracks in Lake street, and if at any time all or any portion of either or both of said tracks shall be abandoned or not used by said companies for the purpose herein contemplated, such abandoned or unused tracks or portions of said tracks shall upon notice from the Board of Improvements be removed by said companies from said street and the space occupied by said rails and paving between the same shall be repaired and put in as good condition as the balance of the streets upon which said tracks were removed.

SECTION 7. That this ordinance shall be in force from and after its passage and legal publication and the filing with the City Clerk of a written acceptance of the terms and conditions of this ordinance and the payment to the City Auditor of the expenses of printing and advertising the same.

Passed by the Common Council July 16, 1886.

Acceptance.

CLEVELAND, OHIO, *Aug. 5th*, 1886.

To the Honorable the Common Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the terms and conditions of an Ordinance numbered 85 and entitled "An Ordinance to permit the East Cleveland Railroad Company and Brooklyn Street

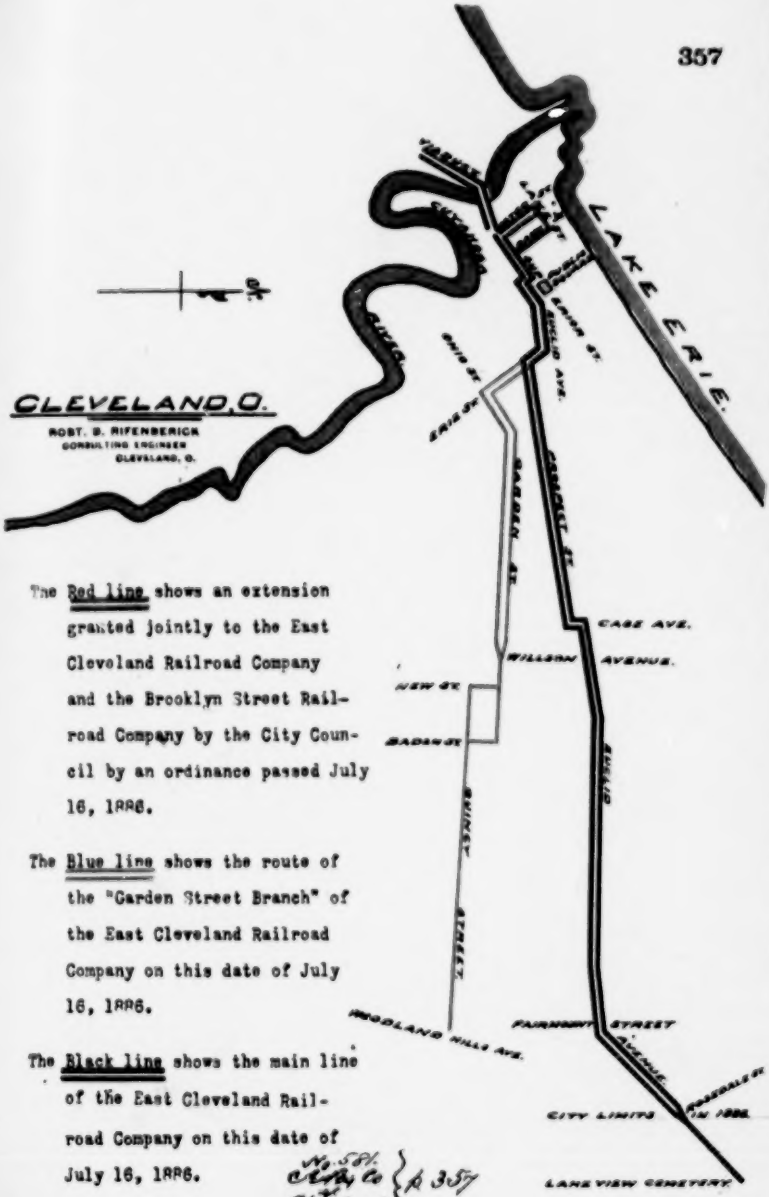
Railroad Company to extend their tracks and operate their railroads on Water, Lake and Bank streets," passed by your Honorable Body on July 16th, 1886.

Very respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*
A. L. JOHNSTON,
Superintendent Brooklyn Street Railroad Co.

Received Aug. 6th, 1886.

(Here follows map marked p. 357.)



The Red line shows an extension granted jointly to the East Cleveland Railroad Company and the Brooklyn Street Railroad Company by the City Council by an ordinance passed July 16, 1886.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of July 16, 1886.

The Black line shows the main line of the East Cleveland Railroad Company on this date of July 16, 1886.

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358 *Ordinance No. 8.*

An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the Comman Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue, upon Garden street, in an easterly direction along and upon said Garden street, to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad, with all necessary switches, turnouts and turn-tables as per plan on file in the office of the Board of Improvements in connection with said branch and its main line, and terminating with the grant for the Garden street main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided, that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension, with boulder paving, laid under the direction and to the approval of the Board of Improvements, and to be maintained in constant good repair at the expense of said company; the entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer, and in operation within one year after the passage of this ordinance; and upon failure so to do the rights herein granted may be forfeited at the option of the City. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City now in force, or which may hereafter be passed, regulating street railroads and amendments thereto and to this ordinance.

SECTION 2. Whenever the Common Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Garden street, or construct sewers, lay or relay any waste pipes,
said company shall take up and relay said tracks at its own
359 expense whenever so ordered by the Board of Improvements,
and shall do the work of grading or regrading, paving or repaving, or pay to the city the cost of same, at the city's option, of the space between the rails of each and all its tracks, switches and turn-outs, unless in the judgment of the Board of Improvements, the pavement in said tracks, at such time shall be at the proper grade and in sufficiently good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication, and the payment by the company of the expense of printing and publishing the same

and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed June 17, 1887.

W. M. BAYNE,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Approved June 18, 1887.

D. D. BABCOCK, *Mayor.*

CHAS. P. SALEN,
City Clerk.

360 CLEVELAND, OHIO, *June* 20, 1887.

To the Honorable Common Council of the City of Cleveland.

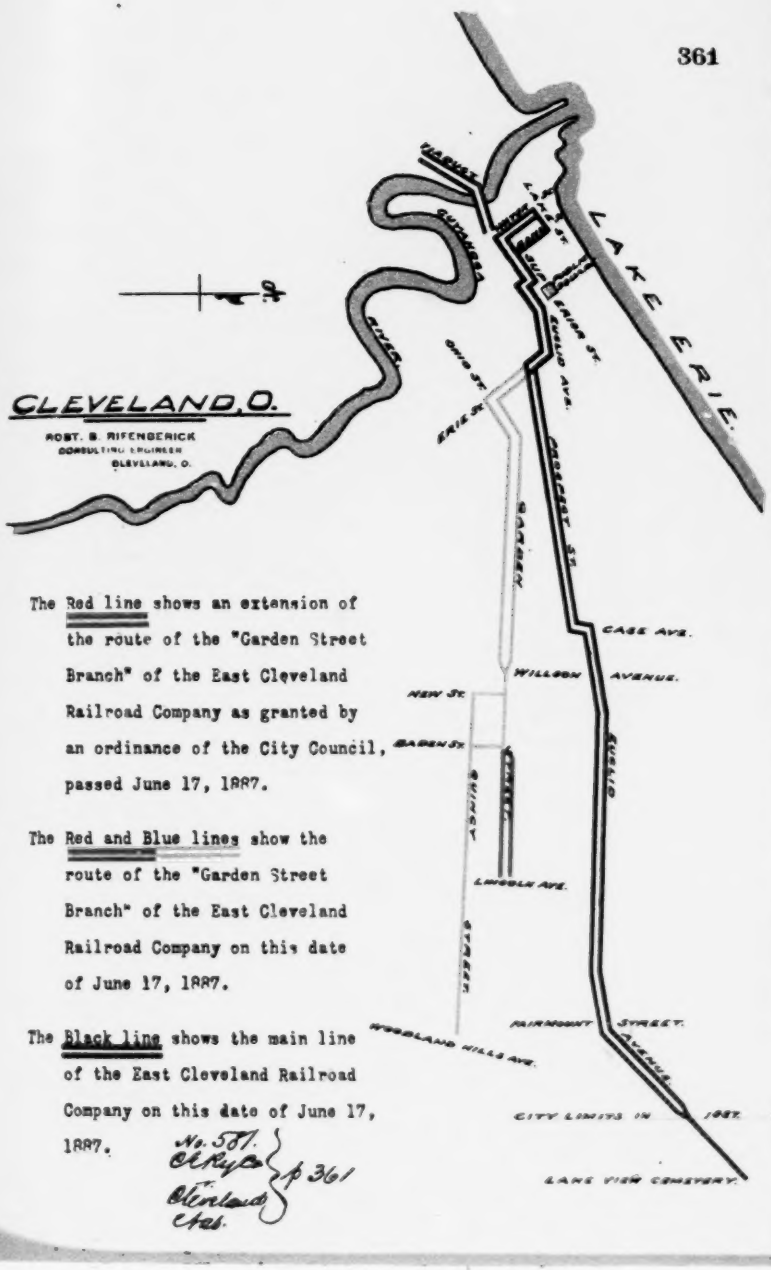
GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. 8, entitled "An Ordinance to permit the East Cleveland Railroad Company to extend the Garden Street Branch of its railway from Baden to Lincoln Avenue.

Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*

Received June 20, 1887.

(Here follows map marked page 361.)



The Red line shows an extension of the route of the "Garden Street Branch" of the East Cleveland Railroad Company as granted by an ordinance of the City Council, passed June 17, 1887.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of June 17, 1887.

The Black line shows the main line of the East Cleveland Railroad Company on this date of June 17, 1887.

No. 587.
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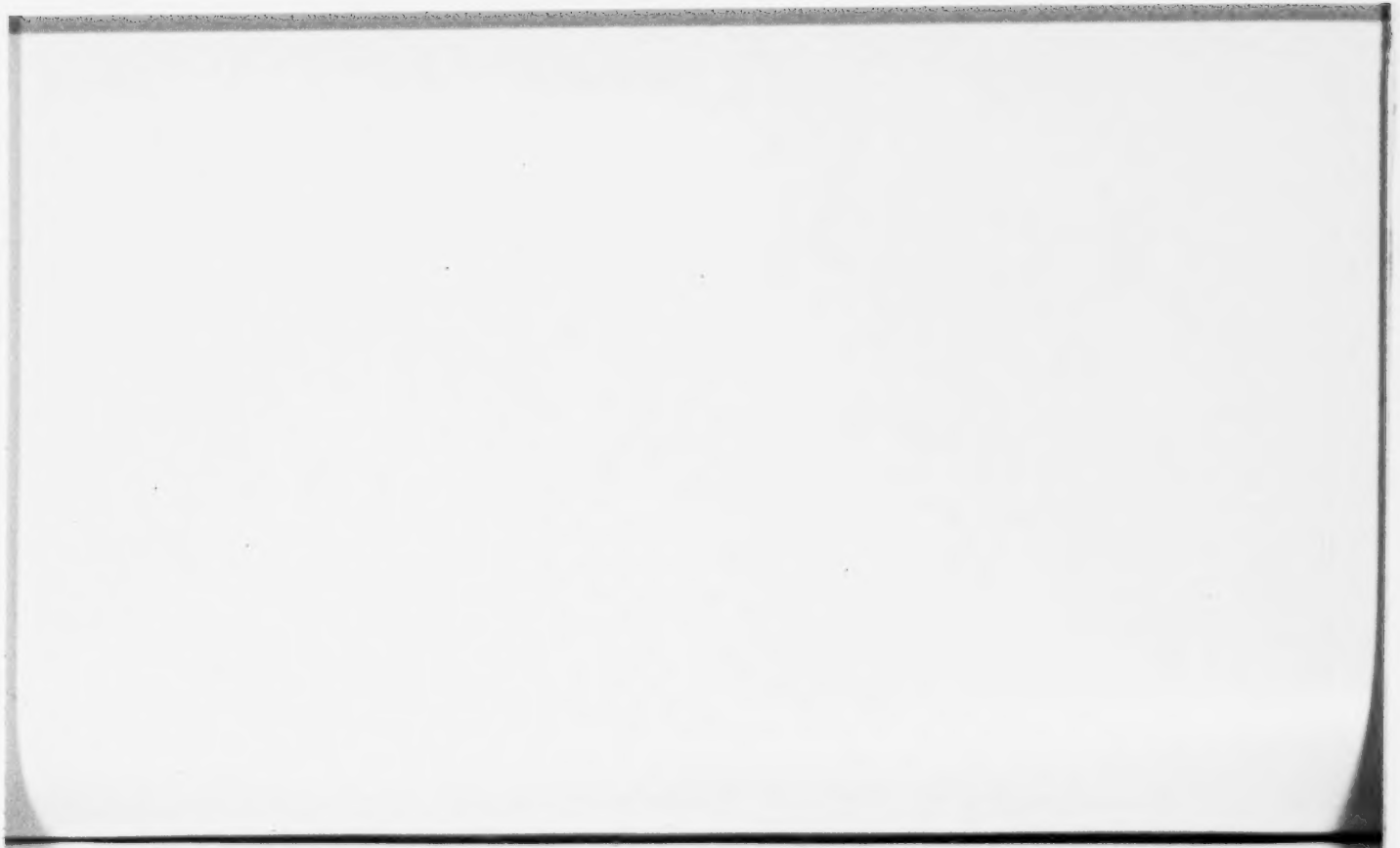
Cleveland Cas.



362 *Ordinance No.* 387.

An ordinance granting the East Cleveland Street Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That, whereas, the East Cleveland Railroad Company, operating a street railway under and by virtue of certain ordinances of the city upon Euclid and also upon Cedar avenue in said city, have, by a communication to the Common Council of date May 14, 1888, signified its willingness and desire to change the motive power upon said Euclid avenue and Cedar avenue between certain points in such communication designated; and

Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit and that an electric system be substituted for animal power for the movement of cars; wherefore the East Cleveland Railroad Company is hereby granted permission to erect and maintain poles and wires and the necessary appliances and fixtures for conducting currents of electricity for the purpose of transmitting and producing motive power to propel and operate the cars upon the following named streets in said city, to wit: Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near the Cleveland & Pittsburgh Railroad Company's right of way in said avenue easterly to a point about 1,500 feet east of Fairmount street. The erection of such poles and the placing of wires thereon shall be under the supervision of and subject to the control of the City Civil Engineer; such poles shall not be over twenty-five feet in height above the ground and shall not be over six inches in diameter at the base, shall be painted in dark color, and repainted from time to time as the Board of Improvements may direct; they shall be set 125 feet apart, except otherwise expressly permitted by the City Civil Engineer; such poles shall be placed at such points near the curb stone as shall be designated by the City Civil Engineer;
363 should it become necessary, in the prosecution of any work by the city, that such poles should be temporarily moved, such removal shall be made by said company and such poles shall be reset at its own cost, without any claim or damage therefore on the part of said company, and such company shall use such precautions for safety from time to time as the Board of Improvements may direct or require.

SECTION 2. The running of cars on any part of the lines of such company may be suspended by the Board of Improvements for such reasonable time as may at any time be necessary on account of repairs of streets or sewers or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid, the same shall be taken up and relaid at the expense of said Railroad Company.

SECTION 3. Said railroad company shall at all times hereafter defend, keep harmless and indemnified the City of Cleveland, of and

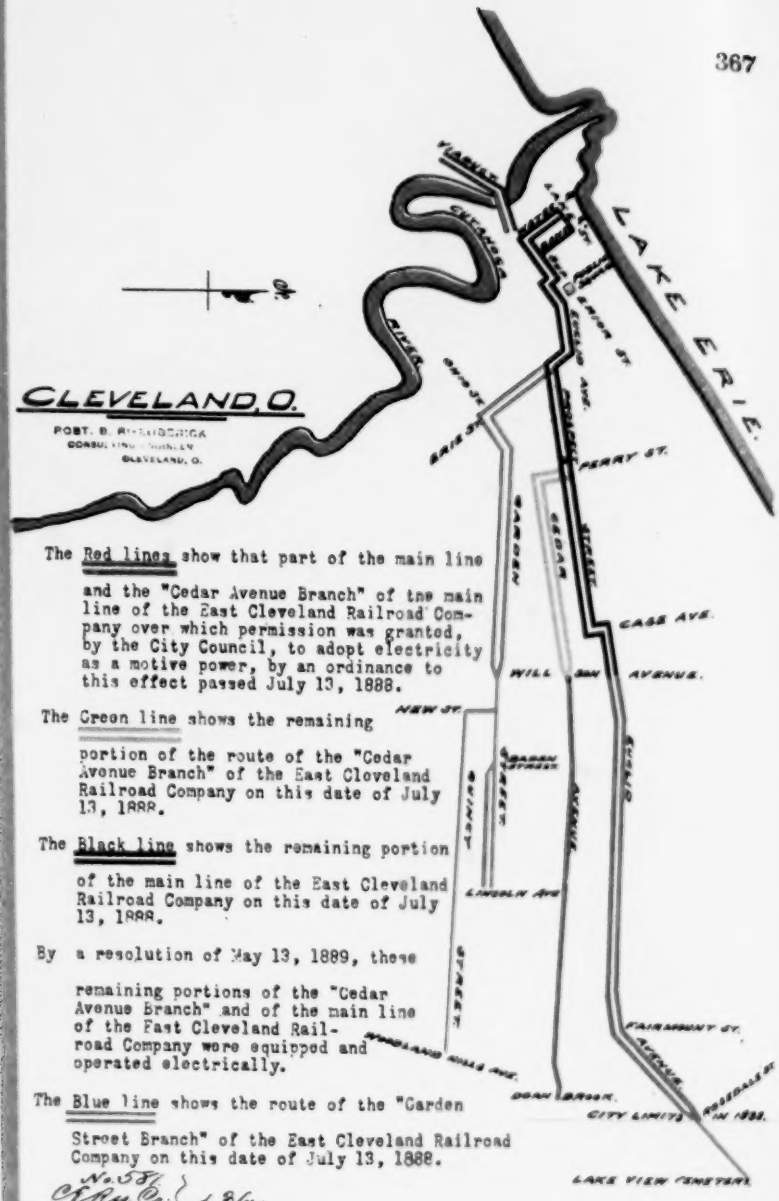
from all damages, lawful claims and demands for injuries to persons or property, costs and expenses, to which said City may be subjected or made liable by any proceeding at law or in equity or otherwise growing out of the grant of the privileges in this ordinance granted, or out of the exercise and enjoyment of the same by said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements as to the rate of speed it may run its cars on the streets heretofore designated, and while the cars of said company are in motion or about to start, a bell shall be sounded at such times as may be necessary to warn persons of danger.

SECTION 5. The said permission herein given is upon the condition that this grant shall be exercised within the period of six months from the passage hereof, and is also granted with all the
364 privileges and subject to all the conditions of this ordinance and of the several ordinances by which the East Cleveland Railroad Company is permitted to lay rails and operate cars thereon in the streets of the City of Cleveland, so far as not inconsistent herewith and to the ordinance governing streets and railroads and all the ordinances in amendment thereof and in addition thereto, "And that said railroad company shall, whenever it becomes necessary to pave or repave the streets along its line, pave or repave and keep in constant repair for a single track, 7 feet of the pavement, and for a double track 16 ft."

SECTION 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon it main and Cedar avenue lines, but nothing herein shall be so construed as to authorize any increase of present fares for transportation over any portion of said company's lines; Provided, that if the said East Cleveland Railroad Company shall, by said electrical system, fail to provide a mode of transit which shall be deemed satisfactory to the Board of Improvements, or if, from any cause, said company shall fail to extend the said electrical system over their entire main and Cedar Avenue lines within eighteen months from date of passage of this ordinance, then said ordinance shall be null and void so far as it relates to extension of charter.

SECTION 7. Said Railroad Company shall, in writing, accept the permission and privileges hereby granted and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted within thirty days after the passage of this ordinance, and shall, within said time, file the said writ-
ing with the City Clerk, otherwise this ordinance shall be
365 null and void, and such acceptance shall be deemed an agreement of the said railroad company with said city to perform all and singular all the matters and things required of said company to be performed under this ordinance.



The Red lines show that part of the main line and the "Cedar Avenue Branch" of the main line of the East Cleveland Railroad Company over which permission was granted, by the City Council, to adopt electricity as a motive power, by an ordinance to this effect passed July 13, 1888.

The Green line shows the remaining portion of the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of July 13, 1888.

The Black line shows the remaining portion of the main line of the East Cleveland Railroad Company on this date of July 13, 1888.

By a resolution of May 13, 1889, these remaining portions of the "Cedar Avenue Branch" and of the main line of the East Cleveland Railroad Company were equipped and operated electrically.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of July 13, 1888.

No. 58 C.R.Ry. Co. } p. 367
Cleveland, O.

SECTION 8. Whenever the Council shall so require the said company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines.

SECTION 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 13, 1888.

M. M. HOBART,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Approved July 14th, 1888.
CHARLES P. SALEN,
City Clerk.

366 *Acceptance.*

CLEVELAND, OHIO, *July* 17, 1888.

To the City Clerk of the City of Cleveland.

DEAR SIR: At a meeting of the directors of the East Cleveland Railroad Company held this day, the following resolution was unanimously adopted, viz: "The East Cleveland Railroad Company hereby accepts the permission and privileges granted by city ordinance No. 387" entitled "An Ordinance granting the East Cleveland Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues," passed by the Common Council on July 13, 1888, and approved by the Mayor on July 14, 1888, and agree to abide by the provisions and conditions therein contained."

A. EVERETT, *President.*

Correct attest:
H. A. EVERETT, *Secretary.*

Received July 23, 1888.

(Here follows map marked page 367.)

368 *Resolution.*

By Mr. BEIDLER:

Whereas, By the terms and conditions of Ordinance No. 387, passed by the Common Council July 13, 1888, it is stipulated that the East Cleveland Railroad Company shall, whenever required by the Council, use the same system of motive power on the entire length of its main and Cedar Avenue lines, as is authorized and permitted by said Ordinance, from Willson avenue easterly; and

Whereas, the use of electricity as a motive power on such street railroad has fully demonstrated its practicability and necessity. It has also substantially solved the question of rapid transit, and in the opinion of the Council its use should be extended as contemplated in said ordinance; therefore be it

Resolved, That the East Cleveland Railroad Company be, and it is hereby authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof, subject however, to the requirements and conditions of said Ordinance No. 387.

Adopted May 13, 1889.

Motion.

By Mr. FAULHABER:

To consider the vote by which the resolution "By Mr. Beidler, directing the East Cleveland Railroad Company to use electricity as a motive power on its main and Cedar avenue lines," was adopted. Lost—yeas 9, nays 24.

May 20, 1889.

369 *Acceptance.*

CLEVELAND, OHIO, *May* 17th, 1889.

To the Honorable the City Council of the City of Cleveland, Ohio.

GENTLEMEN: At a meeting of the Board of Directors of this company held this day, it was unanimously agreed to accept the resolution passed by your Honorable Body on May 13th, 1889, as notified by the City Clerk, viz:

"Resolved, That the East Cleveland Railroad Company be and it is hereby required and authorized, as soon as practicable, to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof, subject, however, to the requirements and conditions of said ordinance No. 387." And that we shall proceed at once to comply with said resolution.

Respectfully submitted,

THE EAST CLEVELAND R. R. CO.,
By A. EVERETT,
President, Office 1154 *Euclid Ave.*

370 *Resolution.*

Whereas, on the 10th day of January 1889, The East Cleveland Railroad Company made application to the Board of Commissioners of Cuyahoga County, Ohio, for permission to occupy the Euclid road from the easterly corporate limits of the City of Cleveland to the entrance to Lake View Cemetery continuously with two railroad tracks instead of one track as now occupied by it, for the purpose of operating thereon cars for the carriage of passengers—said cars to be operated either by electricity (*an* now in operation) or by horse power—and whereas said petitioners have obtained the consent in writing of a sufficient number of the owners of the frontage to make more than the amount required by law, to the said occupation, and also to the operation of said cars by electricity, using overhead wires raised on poles, and whereas said Euclid road is already occupied by the Cleveland and Willoughby Plank Road Company—and whereas certain citizens of East Cleveland Township have heretofore remonstrated against the granting of said application which has been considered by the said Board—therefore

Resolved that the application of the East Cleveland Railroad Company as aforesaid be and the same is hereby granted—subject to all the rights of the said Plank-road Company—on the following terms and conditions: First, that before entering upon said road and occupying the same under this permission, said petitioners shall obtain and file with the Board the written consent of said Plank-road Company—Second, that said petitioners shall at their own expense and in a good and workmanlike manner, subject to the approval of this Board, place their said two tracks in the middle of said road, and also grade and widen the roadway of said street for vehicles to the width of 42 feet, making a carriage drive or road upon both sides of their said double track railroad at least 14 feet in width on each side, and said plank road to be laid within said 14 feet on the northerly side of said double track, and if in so widening and grading said road it becomes necessary to cut down or remove trees standing
371 within the limits of said road, authority is hereby given to said petitioner to cut down and remove such trees as this Board would have authority to remove in improving said streets, and will interfere with the proper use of said streets in making said improvements.

Third, that said petitioner shall use and lay only flat rails in said two tracks—and shall so grade, pave and improve all portions of said road lying between the rails of each of said tracks and between said tracks as to afford a good road or passage for vehicles, wagons, carriages, etc., to travel along or across said tracks, and keep and maintain the same in good condition.

Fourth, that the changes and work herein contemplated shall be done and completed within one year from this January 14, 1889.

Fifth, that the term of this grant shall be only twenty-five years from this date.

Sixth, that any and all cost, expense and damages, are to be paid

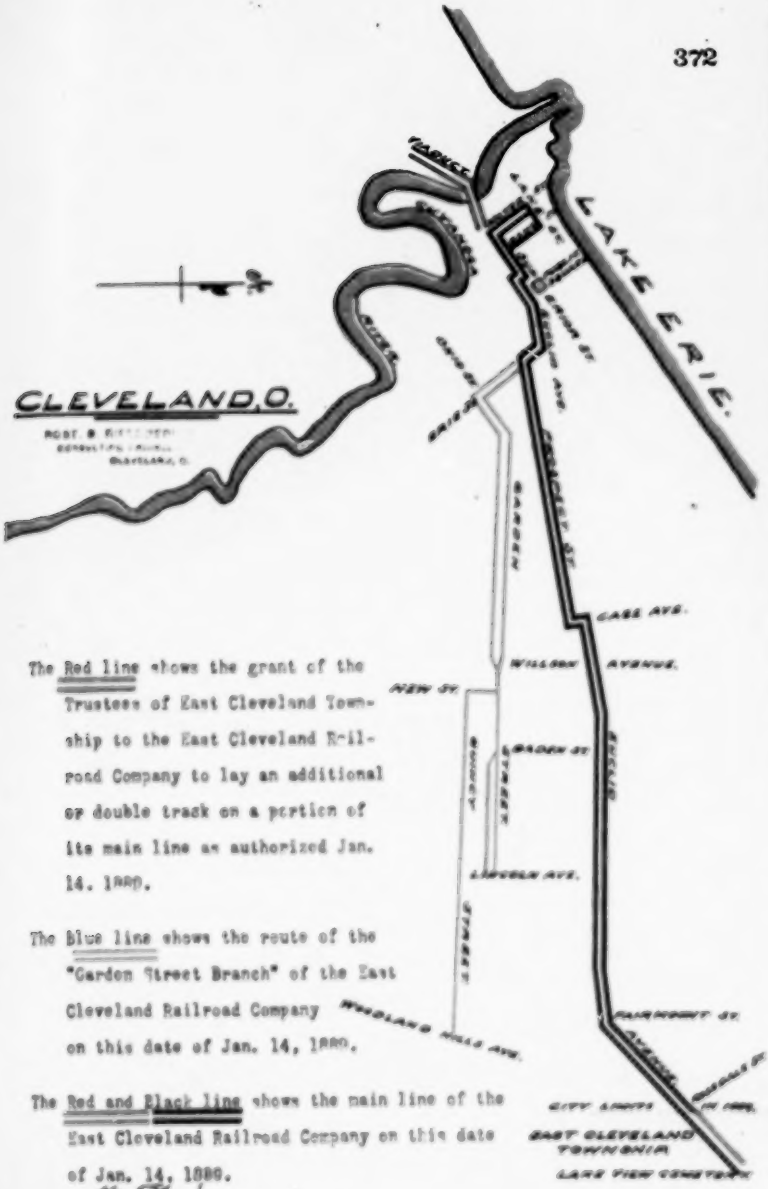
by the petitioner, and the County is to be held harmless by the petitioner from damages by reason of the construction and laying of the said double track.

Seventh, that the petitioners are to construct and maintain all necessary ditches, drains and culverts—if any.

Eighth, that the grading, paving and all and singular the proposed improvement except the tracks of the petitioner are to be under the supervision of the County Surveyor, and done to the satisfaction of surveyor and this board.

Granted January 14, 1889.

(Here follows map marked page 372.)

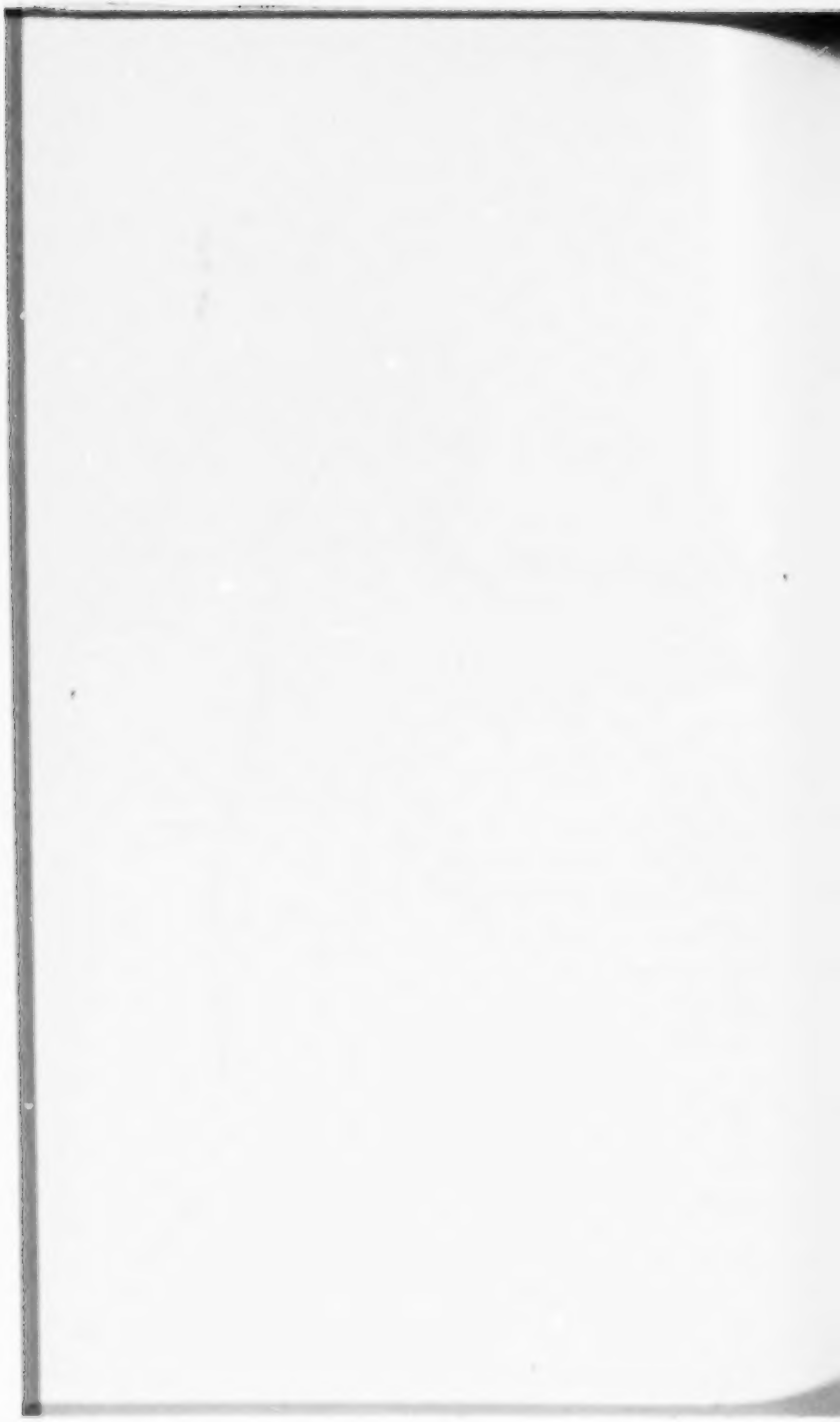


The Red line shows the grant of the Trustees of East Cleveland Township to the East Cleveland Railroad Company to lay an additional or double track on a portion of its main line as authorized Jan. 14. 1889.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Jan. 14, 1889.

The Red and Black line shows the main line of the East Cleveland Railroad Company on this date of Jan. 14, 1889.

No. 372
City of Cleveland



373 *Ordinance No.* 1124.

An ordinance granting to the East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors or assigns, is hereby authorized and granted the right to operate its Garden street branch by electricity, *i. e.,* from the intersection of Prospect and Erie streets, along Erie street to Ohio street, along Ohio street to Brownell street, along Brownell street to Garden street, and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills avenue, and authority is hereby granted said company to erect and maintain on said streets all necessary poles and wires and the necessary appliances and fixtures for the conducting of electric currents to operate by electric power the said Garden street branch during the term of its present grant for said Garden street branch. All poles erected under this ordinance to be of iron unless otherwise ordered by the Board of Improvements.

SECTION 2. The erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision of and subject to the control of the City Civil Engineer and the Board of Improvements, and said company shall pay for the cost and expense of such inspection; such poles shall be of such height and diameter as required by the Board of Improvements, shall be painted in dark color, and repainted from time to time as directed. They shall be set 125 feet apart except otherwise expressly permitted by the City Civil Engineer, and at such places near the curbstone as shall be designated by the City Civil Engineer. Should it
374 become necessary in the prosecution of any work by the city that such poles should be temporarily moved, such removal shall be made by said company, and such poles shall be reset at its own cost, without any claim of damage therefor on the part of said company, and such company shall use such precautions for safety from time to time as the Board of Improvements may direct or require.

SECTION 3. The running of cars on any part of the lines of such company may be suspended by the Board of Improvements for such reasonable time as may at any time be necessary on account of repairs of streets or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements, as to the rate of speed it may run its cars on the streets heretofore designated, and while the cars of said company are in motion or about to start, a bell shall be sounded at such times as may be necessary to warn persons of danger.

SECTION 5. The said permission herein is upon the condition that

this grant shall be exercised over all said portions of said streets within the period of one year from the passage hereof, and upon the further condition that the said East Cleveland Railroad Company shall run all cars operated by said company upon any of its lines or branches around the "loop," so-called, or give passengers free transfers from any of said company's lines to cars that do run around the loop, subject to all the conditions of this ordinance, and of the several ordinances by which the East Cleveland Rail-
375 road Company is permitted to lay rails and operate cars thereon in the streets of the City of Cleveland, so far as not inconsistent herewith and to the ordinance governing street railroads and all the ordinances in amendment thereof and in addition thereto and hereto; and further provided, that when said East Cleveland Railroad Company shall pave said 14 feet said company shall pave at its own expense said space with the same kind of pavement as the rest of the street when said street shall be paved.

SECTION 6. Said Railroad Company shall, in writing, accept the permission and privilege hereby granted, and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted, within thirty days after the passage of this ordinance, and shall within said time file the said writing with the City Clerk, otherwise this ordinance shall be null and void; and such acceptance shall be deemed an agreement of the said railroad company with said city to perform all and singular all the matters and things required of said company to be performed under this ordinance.

SECTION 7. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed March 10, 1890.

F. O. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

376 *Acceptance.*

CLEVELAND, OHIO, *April 4th*, 1890.

To the Honorable the City Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the authority granted us in Ordinance No. 1124, passed by your Honorable Body March 10th, 1890, and entitled "An Ordinance granting the East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch," and respectfully agree to abide by the provisions, conditions, limitations and restrictions contained in said Ordinance.

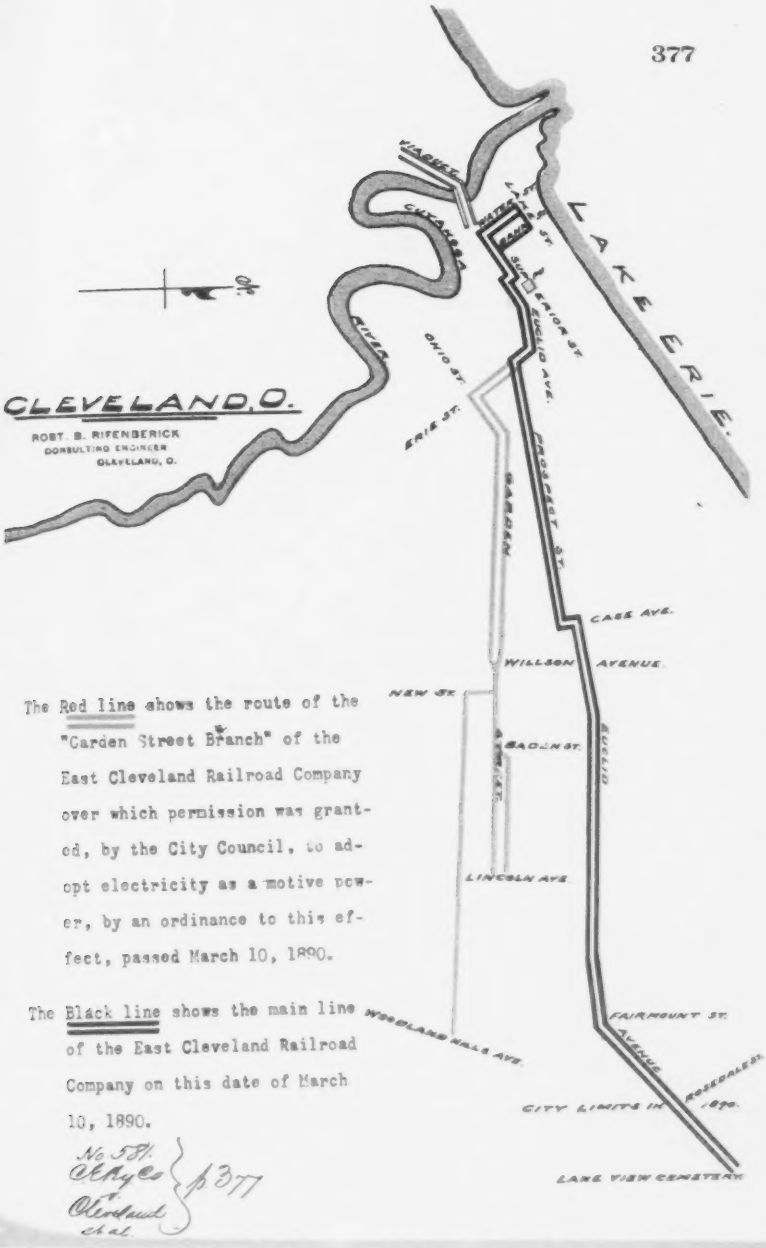
Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *Pres.*

Attest: H. A. EVERETT, *Secretary.*

Received April 8th, 1890.

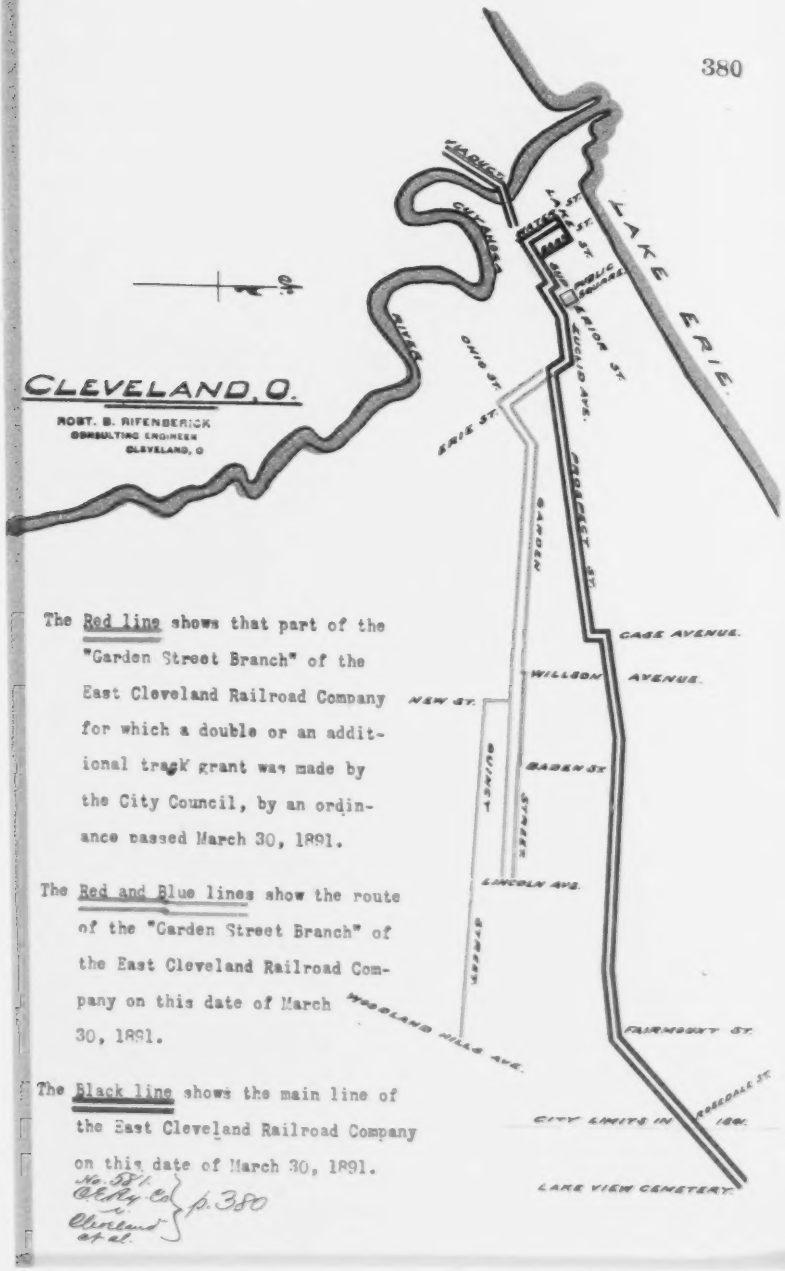
(Here follows diagram marked page 377.)



The Red line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company over which permission was granted, by the City Council, to adopt electricity as a motive power, by an ordinance to this effect, passed March 10, 1890.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 10, 1890.

No 58.
A.A. Ayres
Cleveland
Ohio.
p 377



The Red line shows that part of the "Garden Street Branch" of the East Cleveland Railroad Company for which a double or an additional track grant was made by the City Council, by an ordinance passed March 30, 1891.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 30, 1891.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1891.

No. 58 1/2
C.R.Ry. Co.
vs.
Cleveland
et al.
p. 380

378 An ordinance to grant the East Cleveland Railroad Company the right to construct and operate a second or additional track upon Central avenue from the east line of Willson avenue to the right of way of the Cleveland & Pittsburgh R. R. Co.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors or assigns, be and it is hereby authorized and empowered to lay and operate a second or additional track in and upon Central avenue from the east line of Willson avenue to the Cleveland & Pittsburgh Railroad tracks, and to connect said tracks herein authorized with the tracks now in and upon Central avenue at Willson avenue and at the Cleveland & Pittsburgh Railroad tracks.

SECTION 2. Said company shall pave the space between the outer rails of said double track with the same material, and laid in the same manner, as is in contemplation by the City of Cleveland for the remainder of the roadway, at the time said tracks are built, under the directions and to the satisfaction of the Board of Improvements, and one foot additional outside the rails when the street is paved.

SECTION 3. Said railroad company shall in writing, accept the permission and privilege hereby granted, agree to comply with, adopt and abide by, all the provisions, conditions and restrictions upon which the same are granted, with thirty (30) days after the passage of this ordinance, and shall within said time file the said writing with the City Clerk, otherwise this ordinance shall be null and void, and such acceptance shall be deemed a contract of the said railroad company with said city to perform all and singular the matters and things required to be performed in this ordinance.

SECTION 4. The right herein granted shall be valid until the expiration of the grants for the said company's main line.

379 This ordinance shall be in force from and after its passage and legal publication, and the payment by said company of the expense of publishing the same.

Passed March 30, 1891.

F. P. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

(Here follows map marked page 380.)

381 An ordinance to grant the East Cleveland Railroad Company permission to lay an additional or second track, in Quincy street from New street to Woodland Hills avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors and assigns, be and is hereby authorized and empowered to lay and operate a second or additional track in and upon Quincy street, from New street to Woodland Hills avenue, and to connect the tracks herein authorized with the tracks now laid upon New street, as per plat accompanying the petition of said company.

SECTION 2. Said company shall pave the space between the outer rails of said double track with dressed block Medina stone pavement, laid under the city's specifications, and the paving of said tracks shall be done under the direction of the Board of Improvements, and whenever the city or property holders shall pave the roadway outside said double tracks and the said Railroad Company shall pay to the City the cost of grading and paving for one foot in width of said street on each side of said double tracks, from New street to Woodland Hills avenue.

SECTION 3. That in case of failure, by neglect or otherwise, on the part of the said East Cleveland Railway Company, its successors and assigns, to perform all and singular the conditions of this ordinance, or the general ordinances of the City governing street railways now or hereafter in force and amendments thereto and hereto, the privilege herein granted shall become void and of no effect, and shall cease upon the passage of an ordinance to that effect. The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy street, east of Lincoln avenue, to wit: July 13, 1913.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication and the payment by said company of the expense of publishing the same and the filing in the office of the City Clerk a written acceptance of the terms and conditions hereof.

382 Passed April 20, 1891.

F. O. SPENCER,
Pres. of the Council.

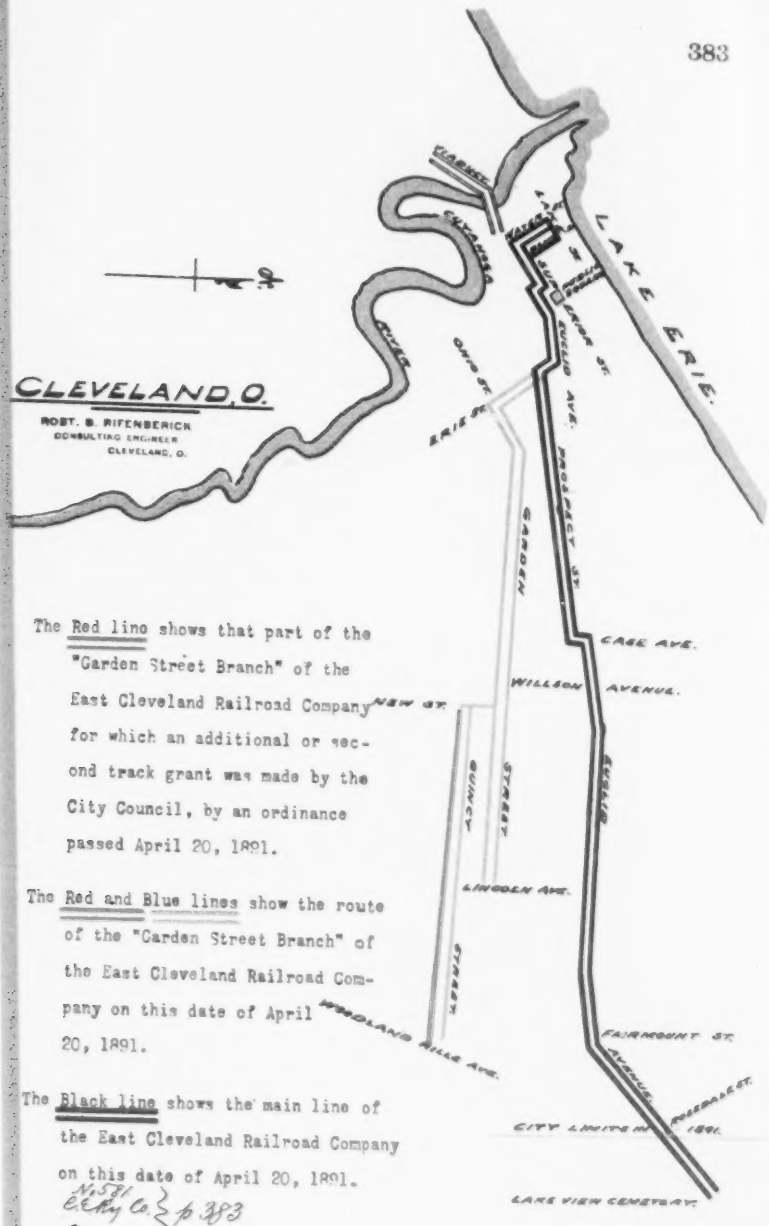
H. H. BURGESS,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *April* 23, 1891.

To the Honorable the City Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the terms, conditions, and restrictions of Ordinance passed by your Honorable Body on April 20th, 1891, numbered 1780 and entitled, "An Ordinance to



The Red line shows that part of the "Garden Street Branch" of the East Cleveland Railroad Company for which an additional or second track grant was made by the City Council, by an ordinance passed April 20, 1891.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of April 20, 1891.

The Black line shows the main line of the East Cleveland Railroad Company on this date of April 20, 1891.

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E. Cly Co } p 383
Cleveland

grant the East Cleveland Railroad Company permission to lay an additional or second track in Quincy street, from New street to Woodland Hills avenue" by order of the Board of Directors.

Respectfully submitted,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Attest: H. A. EVERETT, *Secretary.*

Received April 27, 1891.

(Here follows map marked page 383.)

384 *Communication.*

CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburgh Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. In as much as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South Side or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodation by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *Vice Pres.*

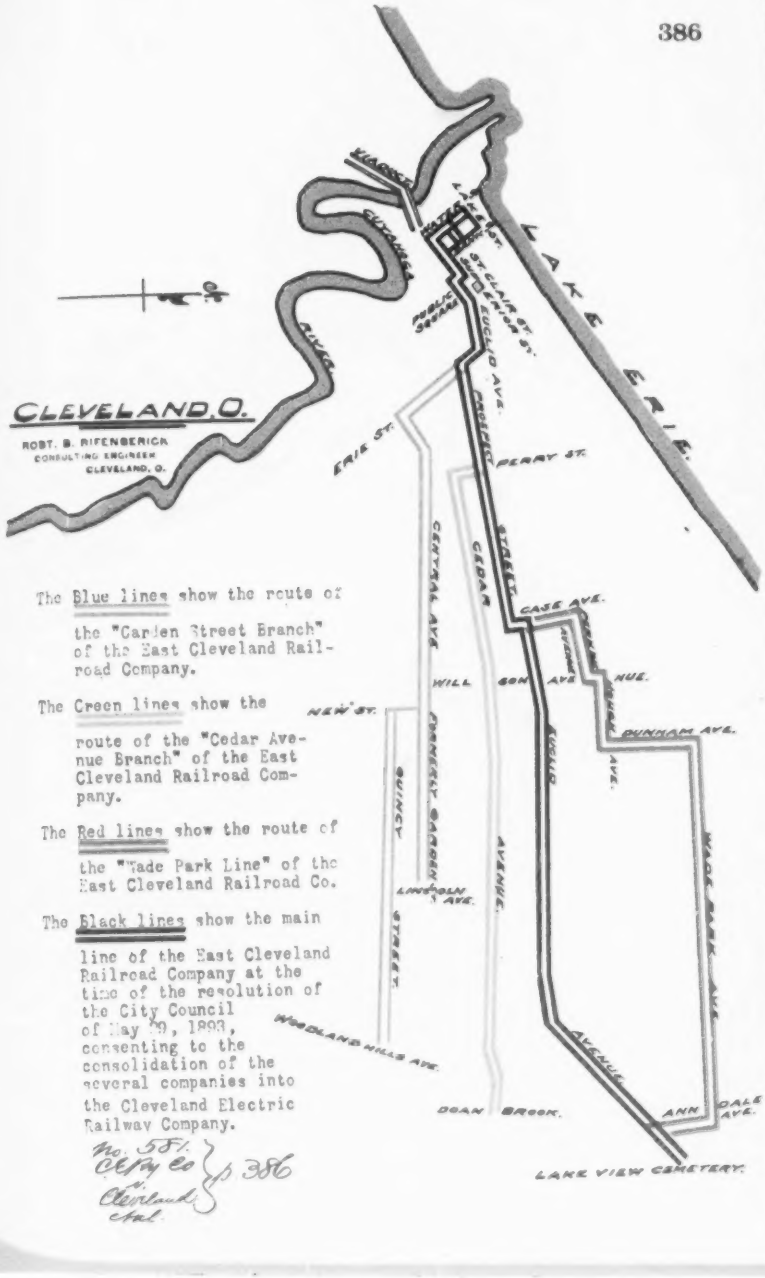
Referred to the Committees on Ordinances, Judiciary, Streets and Railways and Corporation Counsel May 22, 1893.

385 *Resolution.*

By Mr. O'BRIEN:

Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies within the limits of the city of Cleveland; and



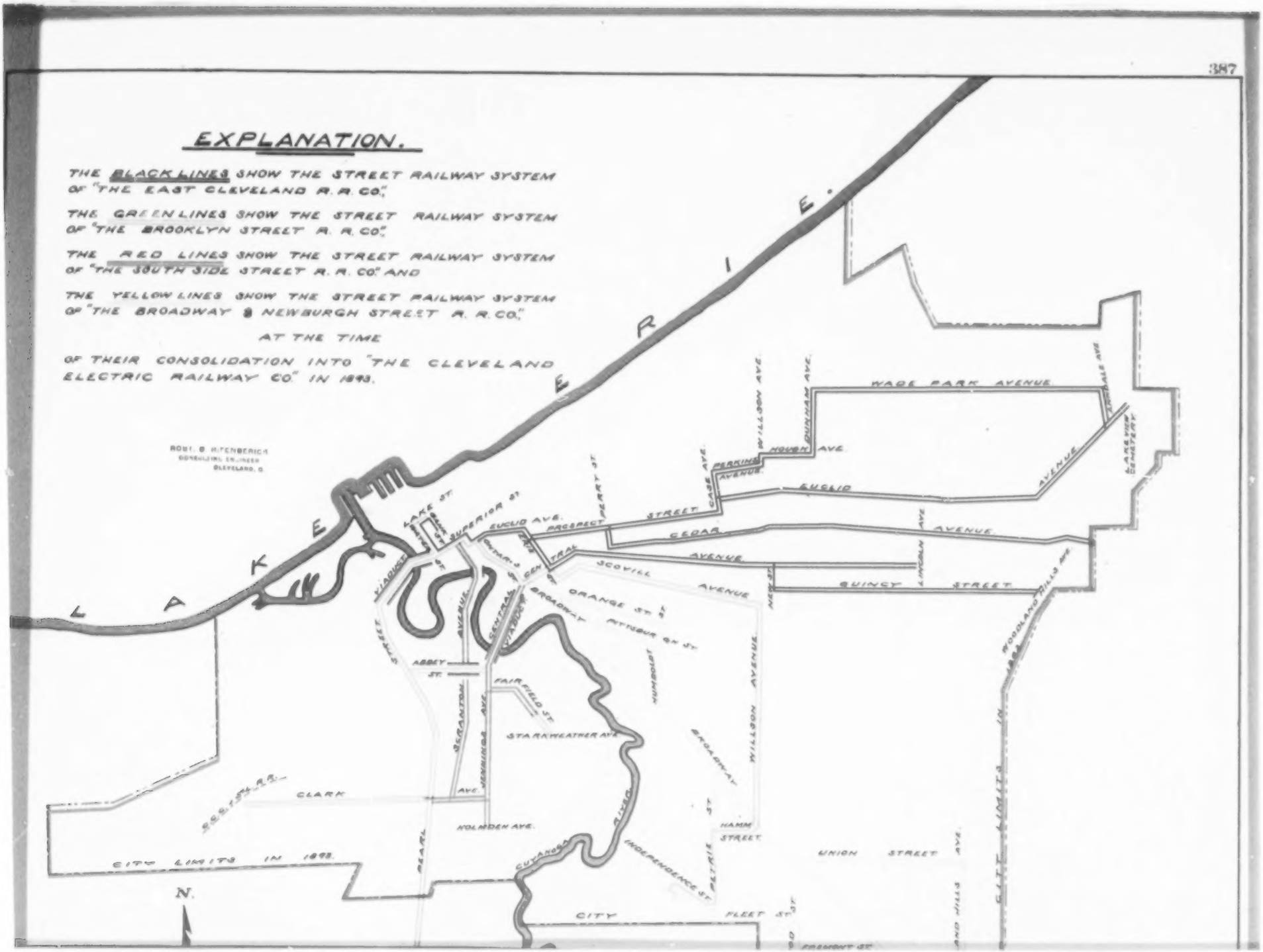
The Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company.

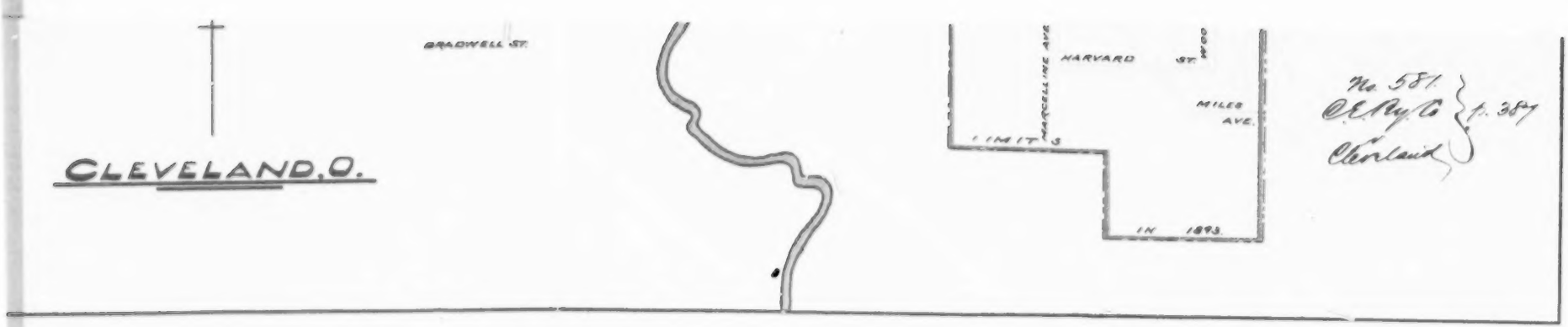
The Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company.

The Red lines show the route of the "Wade Park Line" of the East Cleveland Railroad Co.

The Black lines show the main line of the East Cleveland Railroad Company at the time of the resolution of the City Council of May 29, 1893, consenting to the consolidation of the several companies into the Cleveland Electric Railway Company.

No. 551. City Co } p. 386
N. Cleveland Stat.


EXPLANATION.
THE BLACK LINES SHOW THE STREET RAILWAY SYSTEM OF "THE EAST CLEVELAND R. R. CO."
THE GREEN LINES SHOW THE STREET RAILWAY SYSTEM OF "THE BROOKLYN STREET R. R. CO."
THE RED LINES SHOW THE STREET RAILWAY SYSTEM OF "THE SOUTH SIDE STREET R. R. CO." AND
THE YELLOW LINES SHOW THE STREET RAILWAY SYSTEM OF "THE BROADWAY & NEWBURGH STREET R. R. CO."
AT THE TIME
OF THEIR CONSOLIDATION INTO "THE CLEVELAND ELECTRIC RAILWAY CO." IN 1893.
ROBT. B. RITENBERICK
CONSULTING ENGINEER
CLEVELAND, O.
LAKE ERIE
WADE PARK AVENUE
EUCLID AVENUE
CEDAR AVENUE
QUINCY STREET
SCOVILL AVENUE
ORANGE ST.
ABBEY ST.
FAIR FIELD ST.
STARKWEATHER AVE.
CLARK AVE.
HOLMDEN AVE.
HAMM STREET
UNION STREET
FLEET ST.
CITY LIMITS IN 1893.
N.


CLEVELAND, O.
BRADWELL ST.
HARVARD ST.
MARCELLUS AVE.
MOAB
MILES AVE.
LIMITS
IN 1893
No 581
O.E. Ry Co
Cleveland
p. 387

passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void.

Adopted May 29, 1893—Yeas 12, nays 7.

Acceptance.

CLEVELAND, OHIO, *May* 29, 1893.

The Honorable, The City Council of the City of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of the Resolution adopted by your Honorable Body, May 29th, 1893, respecting the operation of our lines in the City of Cleveland, and agree to perform the same.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *Vice President.*

Received May 29th, 1893.

(Here follow maps marked pp. 386 and 387.)

388

No. 3128.

An ordinance granting the Cleveland Electric Railway Company the right to extend and operate its double track street railroad in Prospect street, from Erie street to Ontario street, and along certain parts of Seneca, Lake, and Ontario streets.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company is hereby granted permission to extend its double track street railroad on and along Prospect street, from its present tracks at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines on Ontario street; also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets, thence along Seneca street to Lake street, thence along Lake street to Ontario street, and thence along Ontario street to the center of Monumental Park, connecting with the present tracks in Ontario street; with the necessary connecting tracks and also poles and overhead wires, and to construct and maintain said extensions and to operate the same by means of electricity as a motive power, upon the following terms and conditions:

SECTION 2. The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles shall be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of streets or sewers, or the
389 making of any public improvement, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 3. The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to persons or property, cost and expense to which the city may be subjected or made liable by any proceeding at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Upon completion of the repaving of Prospect street between Erie and Ontario streets, heretofore ordered by the Council, said company shall pay into the city treasury to the credit of the fund for such repaving, a sum equal to the ascertained cost of paving a strip sixteen feet in width and extending from Erie street to Ontario street; and when any of the other streets over which such

extension is granted shall be repaved, the said company shall pay the cost of paving a strip sixteen feet in width for a double track and seven feet for a single track over the entire length of the same, including street intersections; and it shall keep in constant good order and repair sixteen feet in width along the center of the roadway, of each of said streets along the extension herein granted.

SECTION 5. The said company shall comply with and perform all the terms and conditions of the resolution adoped by the City Council on the 29th day of May, 1893, in reference to the consolidation of the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company.

390 Upon all of its lines of street railroads within the City of Cleveland, said company shall place and continue the most approved cars, equipped and furnished with such improvements, equipments, and appliances as the Council may deem proper for the safety, convenience, and comfort of passengers, shall run the said cars in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same. The Council shall have the right at any time to require said company to operate its cars over the entire length of any of the lines or branches of the said constituent companies, in the same manner and between the same terminals as cars were operated prior to the consolidation of said constituent companies, or any of them, under the name of The Cleveland Electric Railway Company. Whenever required by the Council, night cars shall be operated throughout the entire length of each of the lines of said company, at least hourly each way, between midnight and 6 a. m. daily. The said company shall also, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of its tracks, including the space commonly known as the devil strip, on all streets and street intersections wherein any tracks on any of the lines of said company are laid, in a manner satisfactory to said Director. In consideration of the grant made by this ordinance, said company agrees that all the terms and provisions of this section shall apply to and be a condition upon each and all the grants heretofore made by the Council to said constituent companies or either of them, under which the existing lines of street railroad now operated by the Cleveland Electric Railway Company have been constructed.

SECTION 6. This grant shall be in force until the 13th day of July, 1913, but the Council reserves and shall at all times have the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein

391 authorized to be constructed on said extension, upon such terms and conditions as the Council may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with said, The Cleveland Electric Railway Company, as to the terms and conditions of such use and occupation.

SECTION 7. The said company within ten days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

SECTION 8. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city relating to street railroads, now or hereafter in force, shall work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void, upon the adoption of a resolution by the Council to that effect. Nothing in this ordinance contained shall be held to release said company from any of the conditions of any of the grants heretofore made by the city to any of said constituent companies.

SECTION 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 17, 1893.

A. J. MICHAEL,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

392 *Acceptance.*

CLEVELAND, OHIO, *July* 24, 1893.

Howard H. Burgess, Esq., City Clerk, City Hall, City.

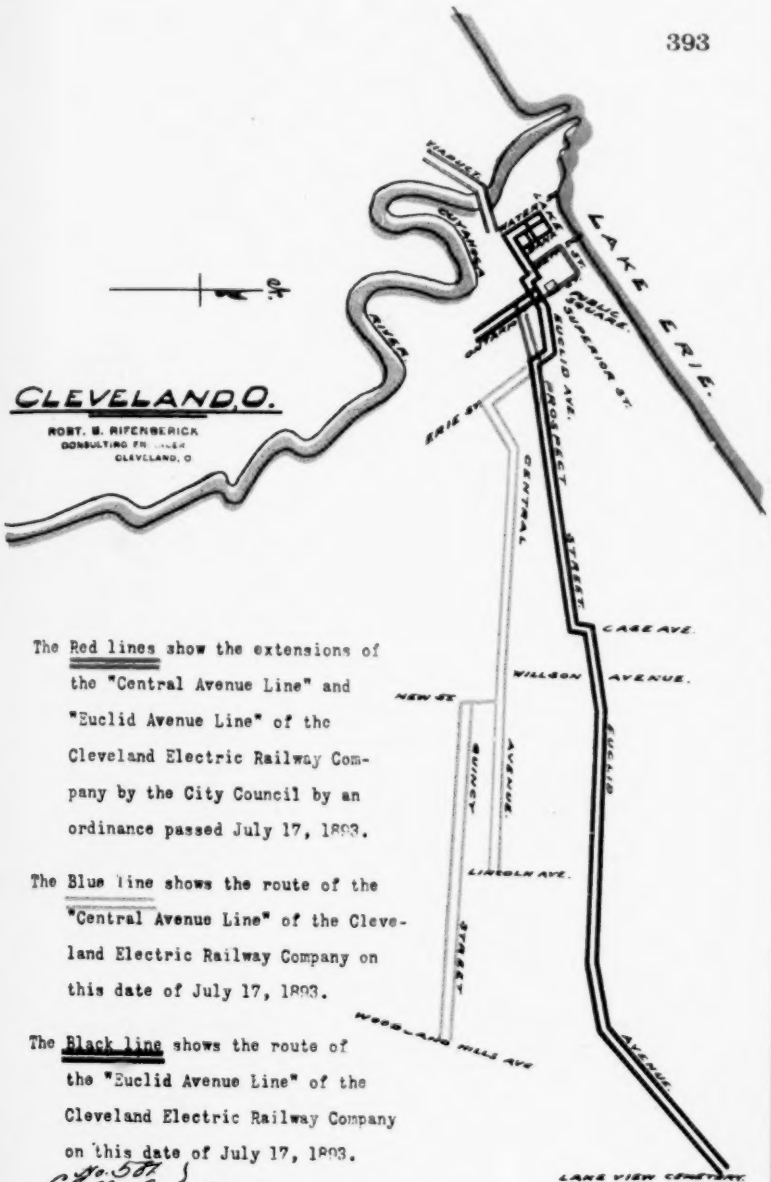
DEAR SIR: The undersigned hereby accepts Ordinance No. 3128, passed by the City Council, on July 17, 1893.

Yours truly,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *V.-President.*

Received July 24, 1893.

(Here follows map marked p. 393.)



The Red lines show the extensions of the "Central Avenue Line" and "Euclid Avenue Line" of the Cleveland Electric Railway Company by the City Council by an ordinance passed July 17, 1893.

The Blue line shows the route of the "Central Avenue Line" of the Cleveland Electric Railway Company on this date of July 17, 1893.

The Black line shows the route of the "Euclid Avenue Line" of the Cleveland Electric Railway Company on this date of July 17, 1893.

No. 58 Ry Co
Cleveland Ohio
p 393

394 An Ordinance granting permission to the Cleveland Electric Railway Company and the Cleveland City Railway Company to extend their tracks in Willson avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That permission is hereby granted to the Cleveland Electric Railway Company to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hough and Willson avenues to the northerly terminus of said Willson avenue with the necessary curves and connecting tracks, and that permission is hereby granted to the Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue, with the necessary curves and connecting tracks, such extensions to be constructed, maintained, and operated in connection with the existing tracks in said Willson avenue, as a double track street railroad, with the necessary poles and overhead wires, and to be operated by means of electricity as a motive power, upon the following terms and conditions:

SECTION 2. The said grantees shall jointly construct and maintain the tracks, wires, poles, and appliances herein authorized to be constructed on said extensions, and each of said companies shall have the right to occupy and use the tracks, wires, poles, and appliances of the other company now in said Willson avenue, north of the center of Woodland avenue, upon such terms and conditions as the Council may deem just and reasonable, unless they shall otherwise agree as to the same.

SECTION 3. The laying of such tracks and the erection
395 of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of iron or steel, and they shall be of such size, shall be painted such color, and shall be set at such places as shall be required by said Director. Whenever, in the prosecution of any work by the city, or for any other reason, the Director of Public Works or the Board of Control shall deem it necessary or advisable, such tracks, poles, wires, or appliances shall be temporarily removed and replaced at the expense of said companies, and without liability on the part of the city for any damage resulting therefrom. The running of cars on any part of said extensions may be suspended by the Board of Control for such period as may at any time be necessary on account of the construction, removal, or repair of any pavement, sewer, water, or gas pipe, or other public improvements.

SECTION 4. The said companies shall at all times use such precautions for the public safety as the Council or the Board of Control may from time to time require, and shall at all times defend, keep

harmless, and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to person or property, costs or expense to which the city may be subjected or made liable by any proceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said companies, or either of them.

SECTION 5. The Cleveland Electric Railway Company shall run through cars on said Willson avenue between Broadway and the northerly terminus of said avenue, in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same, and at such other places as the Council shall from time to time require. Night cars shall be operated by said company throughout the entire length of said Willson avenue at least
396 hourly each way, between midnight and 6 o'clock a. m. daily. The operation by the Cleveland City Railway Company of said line of street railroad on Willson avenue north of Woodland avenue shall be under the control and regulation of the Council. Only the most improved motors and cars now or hereafter in use by either of said companies shall be used on said Willson avenue, and the same shall be equipped and furnished with such improvements, equipments, and appliances as the Council may deem proper for the safety, convenience, and comfort of passengers, and the public. In laying said track, girder rail of at least ninety-three pounds shall be used. All cars shall be properly lighted at all times between sunset and sunrise, shall be so heated as to maintain a reasonably comfortable temperature therein at all times, and shall be supplied with such guards as shall securely close the tracks thereof. The said companies shall, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of their tracks on said Willson avenue, including the space commonly known as the devil strip, in a manner satisfactory to said Director.

SECTION 6. A passenger on any car operated on any part of said Willson avenue, on payment of one fare, either in cash or by ticket, shall be entitled, without additional or extra charge, to be transferred to any other line of either of said companies, intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga river, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the line on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line and to have a continuous ride thereon. The Council shall at all times have the right
397 to prescribe rules and regulations in respect to the transferring of passengers as provided for in this section.

SECTION 7. Said company shall, at the time of constructing such extensions, pave their tracks and the space between their tracks in said extensions with such pavement as may be required by the Council or the Board of Control, in that portion of said Willson

avenue north of St. Clair street, the same to be done under the direction and to the acceptance of the Director of Public Works, and whenever such portion of said avenue shall be paved by the City, said companies shall pay for the paving of a space one foot in width on the outside of each outer rail, with the same material as the balance of the street shall be paved with, in addition to the paving above mentioned. Said companies shall also, at the time of constructing such extensions, take up all pavement that is deemed necessary by the Director of Public Works, in that portion of said Willson avenue which is now paved, and replace the same in as good condition as the same is now in, to the acceptance of the Director of Public Works, and shall, within sixty (60) days after the acceptance of this ordinance, pay to the property owners on such paved portion of said Willson avenue their pro rata share of the amounts heretofore paid by them or their predecessors in title for such pavement as is embraced in a strip sixteen (16) feet in width extending the entire length of same, and shall pay to the city the cost of a strip of pavement sixteen (16) feet in width of all street intersections. The said company shall keep in constant good repair and order, to the acceptance of the Director of Public Works, on that portion of Willson avenue north of the center of Scovill avenue, the pavement embraced within the tracks of said companies, the space between said tracks, and a strip one foot in width on the outside of each outer rail, in all a strip of pavement sixteen (16) feet wide, and whenever the Council shall deem it necessary to repave any portion of said Willson avenue north of the center of Scovill avenue, said
398 companies shall pay the cost of paving a strip sixteen (16) feet in width along such portion of Willson avenue with such pavement as the Council shall deem proper.

SECTION 8. Said companies shall, at the time of constructing said extensions, at their own expense, widen the roadway of said Willson avenue, between Euclid and Scovill avenues, by a space of five (5) feet on each side thereof, set back the curbs, all hydrants, and catch basins now in said spaces, and leave the lawns on either side in good order, and pave said spaces of five (5) feet on each side of said roadday with the same material as that used in the pavement of the present roadway in that portion of said Willson avenue, all to be done in a proper manner, under the supervision and to the acceptance of the Director of Public Works; and the Council does hereby declare that it is necessary that the roadway of said Wlson avenue, between Euclid and Scovill avenues, be widened by the space of five (5) feet on each side thereof in case said extension be constructed, and does ordain that said portion of said Willson avenue be so widened at the time said extensions are constructed, and that the same be done by said companies as aforesaid, at their own expense.

SECTION 9. The said companies shall comply with and perform all of the general ordinances of the City relating to street railroads now or hereafter in force.

SECTION 10. This grant shall be in force until the first day of July, 1914.

SECTION 11. Within ten (10) days after the passage of this ordinance the said companies shall pay to the city the cost of publishing

the same, and shall file with the City Clerk an acceptance, in writing, by both of said companies of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said companies shall commence the work of constructing said extensions, and shall complete the same within six (6) months thereafter; otherwise this ordinance shall be null and void.

399 SECTION 12. The failure or refusal of either of said companies at any time to comply with and perform all and singular the terms and conditions of this ordinance applicable to such company, or the general ordinances of the city relating to street railroads now or hereafter in force, shall work a forfeiture of this grant as to such company so in default, and the rights and privileges hereby granted to the same shall become null and void, upon the passage of an ordinance by the Council to that effect.

SECTION 13. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed Feb. 19, 1894.

A. J. MICHAEL,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

400 *Acceptance.*

CLEVELAND, *February* 26, 1894.

To the Honorable City Council.

GENTLEMEN: The Cleveland City Railway Company accepts Ordinance No. 3196-A for the joint construction of street railway tracks in Willson avenue.

Very truly yours,

THE CLEVELAND CITY RAILWAY COMPANY,
By J. B. HANNA, *Secretary and Treas.*

CLEVELAND, OHIO, *February* 22, 1894.

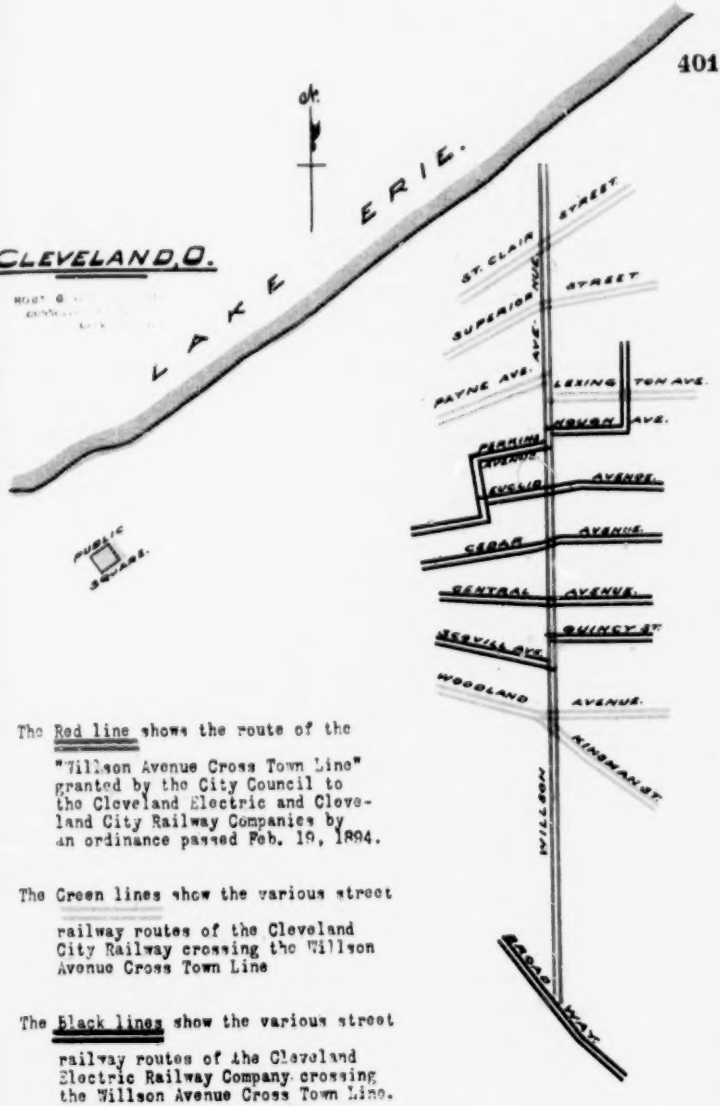
To the City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company hereby accepts Ordinance No. 3196-A, and agrees to comply with and perform all the terms and conditions thereof.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *President.*

(Here follows map marked page 401.)



The Red line shows the route of the "Willson Avenue Cross Town Line" granted by the City Council to the Cleveland Electric and Cleveland City Railway Companies by an ordinance passed Feb. 19, 1894.

The Green lines show the various street railway routes of the Cleveland City Railway crossing the Willson Avenue Cross Town Line

The Black lines show the various street railway routes of the Cleveland Electric Railway Company crossing the Willson Avenue Cross Town Line.

No. 381.
C. E. Ry. Co.
v.
Cleveland
et al.
} p. 401

402 No. 3601.

An Ordinance granting the Cleveland Electric Railway the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue.

SECTION 1. Be it ordained by the Council of the City of Cleveland, that the Cleveland Electric Railway Company is hereby granted permission to extend, maintain and operate, by means of electricity as a motive power, its double track street railroad on and along Quincy street from its present tracks therein, westerly to Willson avenue, connecting by curves with its Willson avenue tracks.

SECTION 2. The laying by said company of its tracks in said extension, the erection of the necessary poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and said poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may, at any time, be necessary on account of repairs of streets or sewers, or the making of any public improvement, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 3. The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the city of Cleveland from and against all lawful claims and demands for any injury to persons or property, costs and expenses to which the city may be subjected or made liable by any pro-
403 ceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Said company shall, at the time of constructing said extension, pave its tracks and the space between its tracks, including the space commonly known as the devil strip, in said extension, with such pavement as may be required by the Board of Control, the same to be done under the directions and to the acceptance of the Director of Public Works; and whenever said portion of said Quincy street shall be paved by the city, said company shall pay for the paving of a space one foot in width on the outside of each outer rail with the same material as the rest of the street shall be paved with, in addition to the paving mentioned; and shall also, if the Board of Control deem it necessary, repair said tracks and space between the same with such material and in such manner as the Board of Control may order; and whenever said Quincy street shall be repaved, the said company shall pay the cost of paving a strip sixteen feet in width over the entire length of said extension, including street intersections;

and said company shall keep in constant good order and repair sixteen feet in width along the center of the roadway of said Quincy street between the points aforesaid.

SECTION 5. No additional fare shall be charged to any passenger by reason of this extension.

SECTION 6. This grant shall terminate with the grant for said company's present line in Quincy street. In consideration of the grant herein made, said company shall surrender all rights and privileges heretofore granted for the construction and operation of a street railroad in New street and the Council hereby consents to the abandonment by said company of its present track in New street, provided said company shall remove its said tracks and place
404 the street in good condition, to the satisfaction of the Director of Public Works and the Board of Control.

SECTION 7. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city, relating to street railroads, shall work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage of an ordinance by the Council to that effect.

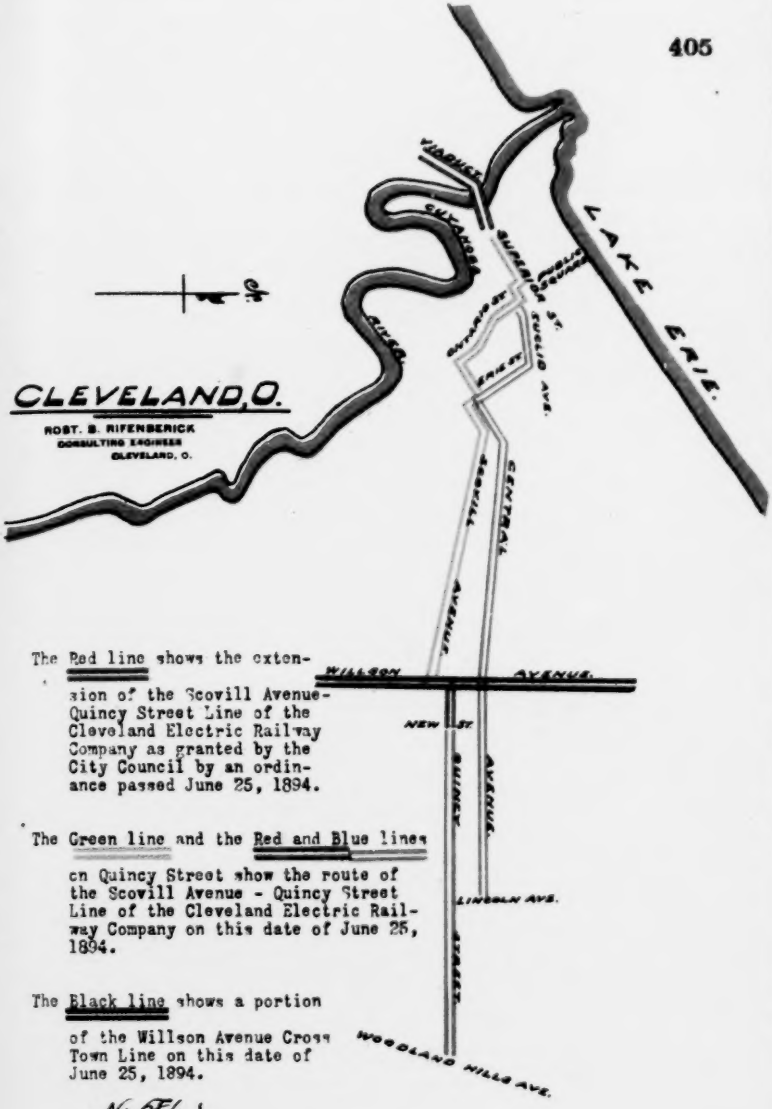
SECTION 8. This ordinance shall take effect and be in force from and after its passage and legal publication, the payment to the City Clerk by said company of the cost of such publication, and the filing by said company with the City Clerk of an acceptance, in writing, of the terms and conditions hereof.

Passed June 25th, 1894.

DAN F. REYNOLDS, JR.,
V. Pres. of the Council.

H. H. BURGESS,
City Clerk.

(Here follows diagram marked page 405.)



The Red line shows the extension of the Scovill Avenue-Quincy Street Line of the Cleveland Electric Railway Company as granted by the City Council by an ordinance passed June 25, 1894.

The Green line and the Red and Blue lines on Quincy Street show the route of the Scovill Avenue - Quincy Street Line of the Cleveland Electric Railway Company on this date of June 25, 1894.

The Black line shows a portion of the Willson Avenue Cross Town Line on this date of June 25, 1894.

No. 58.
Cl. Ry Co.
Cleveland
Ohio
p. 405

406 *Ordinance No.* 33573 A.

An ordinance to grant the Cleveland Electric Railway Company the right to extend and operate a single track street railroad from Euclid avenue along the easterly side of the Public Square to Superior street and the right to use the tracks of the Cleveland City Railway from the westerly side of the Public Square to Erie street.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company be and it is hereby granted permission to construct the following extension of its existing double track street railroad, to wit:

Beginning at the intersection of Euclid avenue with the easterly side of the Public Square, thence northerly by single track along the easterly side of the Public Square to Superior street and to connect with the existing tracks in Superior street at that point, together with the necessary curves and connecting tracks, poles, and wires, and the said The Cleveland Electric Railway Company is hereby authorized to use the tracks of the Cleveland City Railway Company now existing in Superior street in the Public Square and in Superior street from the Public Square to the intersection of Superior street with Erie street, and to connect the tracks of the said The Cleveland Electric Railway Company on Erie street with the existing tracks on Superior street at the intersection of Superior street and Erie street, together with the necessary curves, connecting tracks, poles and wires, and to operate its street railway over such extension by means of electricity or other motive power that may be approved by the Council.

SECTION 2. Said company shall use such rail and shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer and to his satisfaction.

SECTION 3. This grant is made subject to all ordinances of the City of Cleveland, now in force, or which may hereafter be in force, providing for the construction, operation and government of street railways, the said company, however, to pay for seventeen (17) feet of paving if it be allowed to lay its tracks five feet apart, except that the said street railway company shall be relieved from the
407 provisions of Sec. 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

SECTION 4. This grant shall expire March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time, and shall at all times reserve the right to itself, and also the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the city may deem just and reasonable, unless such individual, company or corporation shall otherwise agree

with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and operation.

SECTION 5. Said company shall within ten days after the passage of this ordinance pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and, as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

SECTION 6. This ordinance shall take effect and be in force from and after its passage and legal publication.

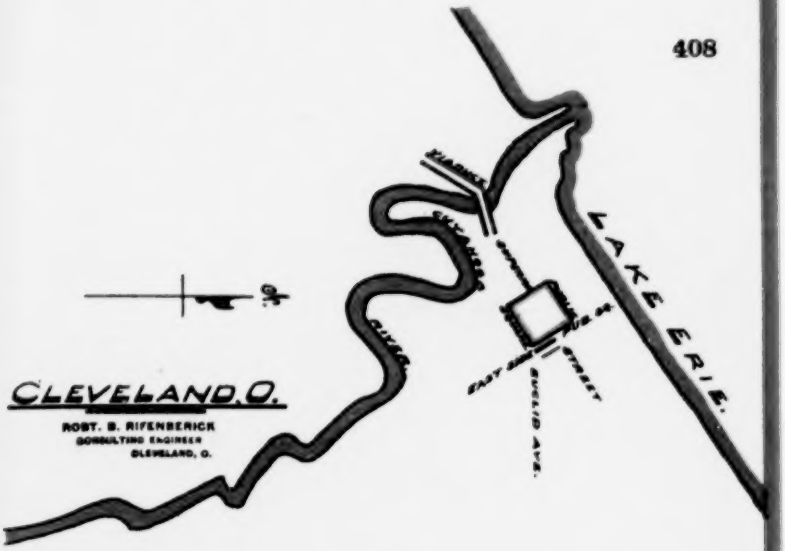
Passed Aug. 5, 1901.

G. C. ASHMUN,
Pres. of the Council.

CHAS. W. TOLAND,
City Clerk.

Approved by the Mayor Aug. 8, 1901.

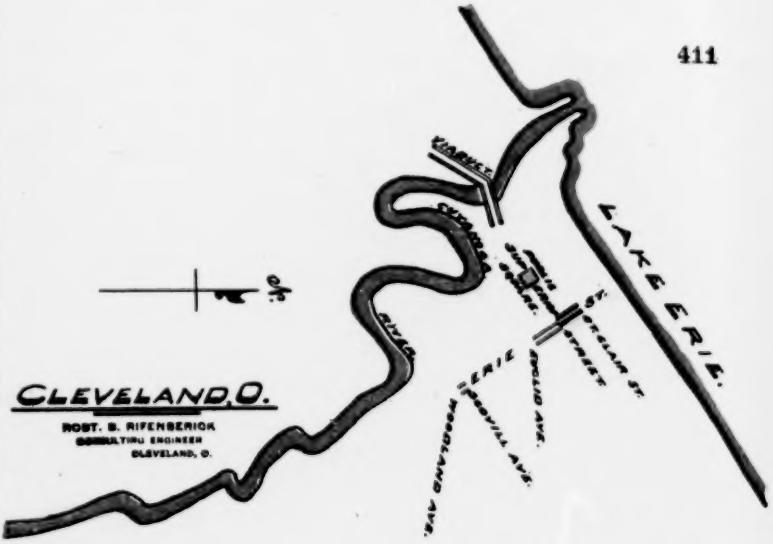
(Here follows diagram marked page 408.)



The Red line shows the grant, by the City Council, to the Cleveland Electric Railway Company by an ordinance passed August 5, 1901, for a single track along the east side of the Public Square from Euclid Avenue to Superior Street, which grant expired March 22, 1905.

The Black line shows the grant, by the City Council, to the Woodland Avenue and West Side Street Railway Company by an ordinance passed July 9, 1888, and is still in effect.

No. 551.
C.E.Ry.Co.
&
Cleveland
et al.
} p 408



The Red lines show the grant, by the City Council, to the Cleveland Electric Railway Company, by an ordinance, passed June 23, 1902, for double track extensions in Erie Street, which grant expired March 22, 1905.

The Black lines show that part of the above grant over which the Cleveland City Railway Company was at the time and is operating under an ordinance of the City Council passed July 3, 1893, and which is still in effect.

No. 581.
C.E.Ry.Co.
Cleveland
Vol. } p. 411

409 No. 38167.

An ordinance to grant to the Cleveland Electric Railway Company the right to extend and operate its double track street railroad on Erie street, from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company, its successors and assigns are hereby authorized to extend and operate said company's double track street railroad in and along Erie street, from Euclid avenue to St. Clair street and from Scovill avenue to Woodland avenue, together with all tracks and curves necessary to connect said extensions with the present tracks of said company in Euclid avenue and Scovill avenue, and with the tracks of The Cleveland City Railway Company in Woodland avenue and Superior street, and all necessary poles and wires, and to operate cars over such extensions by means of electricity, or other motive power that may be approved by the Council; provided that they must use the existing tracks of the Cleveland City Railway Company, between Superior street and St. Clair street, upon terms to be fixed by the Council, if said companies are unable to agree upon terms.

SECTION 2. Said company shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer, and to his satisfaction.

SECTION 3. This grant is made subject to all ordinances of the City of Cleveland, now in force or which may hereafter be in force, providing for the construction, operation and government of street railroads, except that said company shall be relieved from the provisions of Section 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

SECTION 4. This grant shall expire March 22, 1905, and the City reserves the right to itself, and also the right to authorize any other individual, company or corporation to jointly occupy and
410 use the whole or any part of the tracks and appliances, poles, wires and current herein authorized to be constructed upon said extensions upon such terms and conditions as the city may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

SECTION 5. Said company shall, within ten days after the passage of this ordinance, pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and this grant shall become void if said company shall fail to exercise the privileges herein granted within six months from the passage of this ordinance.

SECTION 6. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance of the terms thereof by said company.

Passed June 23, 1902.

T. H. DILLON,
Pres. of the Council.

CHAS. W. TOLAND, *City Clerk.*

Approved by the Mayor June 26, 1902.

(Here follows map marked page 411.)

412 No. 44240.

An ordinance granting to the Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:

Commencing at the intersection of Prospect and Erie streets, in the City of Cleveland, State of Ohio; Thence southerly on, over and along Erie street to Central avenue; thence easterly on, over and along Central avenue to Lincoln avenue, also commencing at the intersection of Quincy street with Willson avenue, in said city; thence easterly on, over and along Quincy street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expires by limitation at midnight on the 22nd day of March, 1905; and

Whereas, the City Council of the City of Cleveland, State of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interest; and

Whereas, The Forest City Railroad Company has presented and made in writing to the City Council of the City of Cleveland, State of Ohio, an offer to maintain and operate a street railroad on, over and along the streets, avenues and parts thereof hereinafter described, upon terms which are deemed by the Council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the Council of the City of Cleveland, State of Ohio, deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad, on, over and along said streets, avenues and parts thereof hereinafter described; and

413 Whereas, On the 28th day of December, 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

Whereas, An application has been presented to this Council for renewal of certain street railroad grants and privileges by the Forest City Railroad Company and Ordinance No. 44240 introduced in this Council granting to said The Forest City Railway Company the privilege asked for in their said application; and

Whereas, Said Ordinance No. 44240 has been referred to the Committee on Street Railroads, Board of Public Service, City Solicitor and Mayor; and

Whereas, The Chairman of said Street Railroad Committee has fixed Thursday, the 31st day of December, 1903, at three o'clock p. m. in room 108 City Hall, as the time and place of the first meeting to consider said application and ordinance; now therefore,

Resolved, That the City Clerk be and he is hereby directed to transmit to the Cleveland Electric Railway Company a copy of said application and said ordinance and a copy of this resolution, together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof,

to participate in the deliberations of said Committee and to offer any suggestions or propositions that they see fit to make, either to said company or to the Council.

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did notify the Cleveland Electric Railway Company of the passage and contents of said resolution, and did receive in reply from the Cleveland Electric Railway Company the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the
414 29th inst., addressed to the Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44258 and 44257 adopted by the Council December 28th, 1903, and, as directed by the Council, extending an invitation to this Company to be present at a meeting of the committee to which said resolutions have been referred, to participate in its deliberations.

We beg to advise the committee and the City Council that the proposed ordinances to be considered by the committee which purport to be ordinances to grant to the Forest City Railway Company the right to operate cars over portions of Woodland avenue and Central avenue, in which streets this company is now operating, are ordinances which impair the existing contract rights of the Company. We are advised that it is not true, in law or in fact, as recited in said ordinances, that the franchises now owned by this Company, under which it is operating, expire at the dates recited in said ordinance, but, on the contrary, neither of the franchises under which this Company operates in Woodland avenue and Central avenue expires for some years to come. The franchises under which this Company is operating in said streets are contracts between it and the City of Cleveland which cannot lawfully be impaired by subsequent ordinances of the city, and upon the faith of these contracts this Company has invested large sums of money. This Company will not in any way recognize the right of the Council to impair its contract rights in the premises.

There are various other reasons why this proposed legislation could not legally be passed by the Council, but we deem it sufficient at this time to call your attention to the fact that you cannot impair our contract rights in the method suggested by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *President.*

415 To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company, as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk, answering the invitations in resolutions Nos. 44257 and 44258 adopted by the City

Council of the City of Cleveland, State of Ohio, December 28, 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances, that the franchises now owned by the Company, under which it is operated, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this Company operates in Woodland avenue and Central avenue expire for some years to come."

The Committee having ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your company and the City of Cleveland. The Committee has taken recess until Monday, the 4th inst., at 4:00 p. m., when they will again meet at Room 108 City Hall for further deliberation on this subject.

The Committee is advised that the grants which ordinance No. 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd day of March, 1905. Since your claim that the said grants expire at later dates, the Committee hereby request specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the committee meeting on Monday after-
416 noon.

The Committee also desires you to have your representatives present at the said meeting to present any views or suggestions that you may have to make upon the subject of the Ordinances under consideration.

Very truly yours,

CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of the Cleveland Electric Railway Company, was present and stated that Mr. Andrews, President of the said Railway Company, was out of the City and that in his absence no one was authorized to speak for him, but no other answer was made by said The Cleveland Electric Railway Company to the letter of the said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with:

Now, therefore, be it further ordained by the Council of the City of Cleveland State of Ohio, that,

SECTION 1. The Council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway Company, its successors and assigns hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles, trolley, feed and span wires,

appliances, equipment, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect street and Erie street, in the City of Cleveland, State of Ohio; thence easterly on, over and along Erie street to Central avenue; thence easterly on,
417 over and along Central avenue to Lincoln avenue; and also commencing at the intersection of Quincy street with Willson avenue, in said City; thence easterly on, over and along Quincy street to Woodland Hills avenue.

The rights herein granted in Erie street are subject to the reversed right of the City of Cleveland to make further grants in said Erie street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the City of Cleveland may deem just and equitable.

SECTION 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first-class, and to the satisfaction of the Board of Public Works.

SECTION 3. The right is hereby granted to said grantee to erect the necessary poles and wires and connect the necessary power houses with said street railroad wherever necessary.

SECTION 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by the grantee, if such transfer be necessary to enable him to continue to his destination. The City reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points, and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years of age, accompanied by a person paying fare, shall be carried free.

SECTION 5. The City reserves the right to purchase and
418 street railroad tracks, poles, wires, appliances, or equipment owned or used by the grantee on such route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a Board of Arbitration, consisting of three persons, a majority of whom shall decide all questions.

SECTION 6. In case of arbitration in the purchase of said street railroad, the City shall give at least six months' written notice of its intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing, within thirty days thereafter, one arbitrator. The two, within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator, or on the failure of the two arbitrators to name

the third, the probate judge of Cuyahoga County may name either or both, as the case may be, upon the application of the City. In case of death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SECTION 7. The value of said street railroad shall be obtained as follows: The cost of reproduction shall be estimated, and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power Houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street pavement to the extent paid for by the grantee.
6. Rolling stock.
7. Miscellaneous.

419 To this total valuation of the above items shall be added twenty (20) per cent, but in arriving at the said valuation the franchises and privileges granted by the City shall not be estimated or paid for.

SECTION 8. The City reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

SECTION 9. The City reserves the right to grant to any other party or parties the joint use of not to exceed ten per cent of the length of the route herein described, on such terms as may be fixed by the Council, in case the parties do not agree; but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SECTION 10. If at the expiration of this franchise no extension or renewal thereof be granted by the City to the then owner, and the City has not itself acquired the property, then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right, and be under obligation to purchase said railroad under the terms providing for the purchase by the City as herein contained.

SECTION 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the City Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, lists of names of stockholders, showing their respective holdings in said company, and shall be permitted to ascertain from said records and books the actual amount of capital stock issued, the cost of the property, liabilities, assets, profits and losses, income, expenses and cost of betterments.

SECTION 12. The maintenance and operation of the street
420 railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railroad

ordin[illegible]es now in force, except as the same are herein or hereafter modif[illegible], and shall be subject to the future ordinances and regulations [illegible] the Council.

SECTION 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and described on the 23d day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona-fide* legal proceedings and other unavoidable delays over which the said grantee has no control, shall not be deemed by the Council ground for forfeiture of this grant.

SECTION 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires and appliances erected in the highways along the route herein described, and constructing a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated, by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SECTION 15. Whenever in the above ordinance the name of the Forest City Railway Company occurs, or wherever the said 421 The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SECTION 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SECTION 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by the said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11, 1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor Jan. 20, 1904.
Jan. 21-28.

422 An ordinance prescribing the terms and conditions of street passenger railways within the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That any company organized for the purpose of laying down rails for running street passenger cars, to be drawn by horses or mules, through the streets of Cleveland, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 2. No company shall be permitted to lay down any track in any of the streets of said City, without first having obtained the consent of the City Council by resolution, designating the Company to whom the privilege is granted, and the streets and parts of streets through which said track shall run; Provided, that before any such resolution shall pass, or permission be granted, the company shall make application in writing, designating the commencement and termination of their proposed track, and the streets through which they propose to run; after having previously given ten days' notice of such application, by publication in two daily papers in the city, and such application shall also be accompanied with the written consent of the holders of two-thirds of the property fronting on such streets.

SECTION 3. No more than one passenger railway, with necessary turn-outs and switches, shall be laid in any street, nor shall any track be laid within twelve feet of the sidewalk upon any street where it is practicable to be avoided. All tracks laid shall be of the gauge of four feet eight and one-half inches, and of the most approved rail, and in such manner as to be no impediment to the free and ordinary use of the streets and the passage of wagons, carriages, and other vehicles, on or across such track at any point and in any and all direc-
423 tions, with suitable bridges at all gutters, so as to permit the flow of water under the same, and on such grades as are now, or may be hereafter established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading any street, constructing sewers, or laying water pipes therein. Any company to whom any privilege shall be granted by the City, may be required to pave with stone ten feet in width along their track or any portion thereof, whenever the City Council shall deem it necessary to preserve an even and hard surface on the street.

SECTION 4. And upon the further condition that any company to whom any privilege may be granted, shall place and continue upon said railway, good cars, with all the modern improvements for the convenience and comfort of passengers, and that they run cars thereon as the public convenience may require, under such direction as the City Council may from time to time prescribe.

SECTION 5. And provided also, that any company to whom such privilege may be granted, shall in all respects comply with the directions of the City Council in building said railways.

SECTION 6. And provided any such company shall not charge more than five cents for each passenger on any of said railways.

SECTION 7. And provided such company take out a license from

the Mayor, for each and every car used upon said railways, and annually pay such license fee as may from time to time be fixed by the City Council, but said annual license shall not exceed seventy-five dollars for each car. And provided also whenever at any future State or Federal census the population of the City of Cleveland shall be eighty thousand inhabitants, then and in that event the company shall be required to pay into the city treasury, for the use of the road fund, one cent on each passenger, in addition to the license
424 herein provided, under such regulations as the Council may prescribe.

SECTION 8. And provided further, that they shall file with the City Clerk a statement, under oath, of the cost of each mile or fraction of a mile of railway completed, and also a monthly statement of the gross receipts, and shall exhibit the books and vouchers belonging to the said company, to a committee of the City Council, or to any person or persons the City Council may appoint to examine such books and accounts at any time. But no company to whom any privilege may be granted, shall assign or transfer their franchise in said railway or railways without first obtaining the consent of the City Council thereto.

SECTION 9. And provided further, that the City of Cleveland shall not be held liable to any company for any damage any company may incur from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water and gas pipes, or the necessary repairing of the same, or from any other delay or damage that may be caused by fire or otherwise; all rights vested in the City Council, the Trustees of water works, or Gas Company, in respect to the care and improvement of the streets, the construction of sewers, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired or affected by any privilege that may be granted to any company, but the rights and privileges granted to any company, by virtue of this ordinance, shall be subject thereto; and any such company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect, or misconduct of their agents or servants, in the management, construction or use of said tracks or railways, and any such company shall indemnify and hold the City harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by reason thereof, or by running the cars thereon.

425 SECTION 10. The president and secretary of each and every such company shall, on the first Tuesday of June in each year, during the continuance of the contract, furnish to the City Council a full and complete list of the stockholders thereof, and such statement shall be verified by the oaths of said President and Secretary, to be administered by a notary public of Cuyahoga County, and attested by his seal.

SECTION 11. And be it further ordained, that the following specifications, regulating the running of street railroads in Cleveland, be required of each and every company taking out license under the provisions of this ordinance, viz:

1st. While the cars are turning the corners from one street to another, the horses or mules shall not be driven faster than a walk.

2nd. Cars driven in the same direction shall not approach — other within a distance of three hundred feet; and the rate of speed of all cars shall be subject to the direction of the City Council from time to time.

3rd. No cars shall be allowed to stop on a cross-walk, nor in front of any intersecting street, except to avoid collision, or to prevent danger to persons in the street; nor shall any car be left or remain standing on any street at any time, unless the same be attached to a team and waiting for passengers.

4th. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

5th. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving towards it, and on the first appearance of danger to such team or person, or other obstruc-
426 tions, the car shall be stopped in the shortest time and space possible.

6th. The conductor shall not allow ladies and children to enter or leave the car while in motion.

7th. Conductors shall announce to the passengers the names of the streets, or places wherever the cars cross in connection with any other railway track.

8th. The cars after sunset shall be provided with signal lights.

SECTION 12. The cars shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars on conviction before the Police Court, and costs of prosecution, and all fines collected under this section shall be paid into the City Treasury to the credit of the school fund. Provided that if any person or persons shall have any cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load or unload the same, without being liable to the penalty attached by this section; provided that such person or persons shall have first obtained the consent of the Board of City Improvements for such removal.

SECTION 13. No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance.

SECTION 14. An ordinance entitled "An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland," passed July 19, 1859, be and the same is hereby repealed, and this ordinance shall take effect and be in force from and after its passage.

Passed Sept. 20th, 1859.

L. C. THAYER,
Pres. of the Council pro tem.

J. B. BARLETT,
City Clerk.

427 An Ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That any individual or company to whom shall be granted the privilege of laying down rails for running street passenger cars, to be drawn by horses or mules through the streets of the City of Cleveland, after the passage of this ordinance, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 2. No individual or company shall be permitted to lay down any track or tracks in any of the streets or public highways of said city, without first having obtained the consent of the City Council by resolution, designating the company to whom the privilege is granted, and the streets or highways or parts thereof, through which said track shall pass. Provided, that before such resolutions shall be passed, or permission be granted to any individual or company for the purpose aforesaid, notice of the intention to make the grant, or give the consent, and inviting proposals therefor, and a specified time and place shall be published for three successive weeks in one or more of the principal newspapers of the city, and no grant shall be made, nor shall such consent be given, except to such individual or company as will agree to carry passengers upon said railroad at the lowest rates of fare.

SECTION 3. That when any such grant or consent is given by the City Council, the individual or company obtaining such grant or consent, shall not proceed to lay down or construct said railroad until the consent in writing of a majority of the owners of the lots or parcels of land bounding or abutting upon the streets or public highways or parts thereof, through which said railroad shall pass, shall be obtained and filed with the City Council.

428 SECTION 4. No more than one passenger railway, with such a number of turn-outs or switches and of such lengths as may be allowed by the City Council, shall be laid in any street or public highway nor shall any track be within twelve feet of the sidewalk, except by permission of the City Council. All tracks laid shall be of the gauge of four feet eight and one-half inches, and with a rail having a lower tramway of at least three and one-half inches wide, and not more than half an inch below the upper tramway, and laid in such a manner as to be no impediment to the free and ordinary use of the streets, and the passage of wagons, carriages and other vehicles on or across such track at any point, and in any and all directions, with suitable bridges at all gutters, so as to permit the flow of water under the same, and on such grades as are now, or may be hereafter established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading any street or highway, constructing sewer or laying water pipes therein. Any individual or company to whom any such privilege shall be granted by the City, shall be required to pay for the paving with the same material as shall be recommended by the Board of City Improvements, and adopted by the City Council, the space between the outer lines of the

rails of their main tracks, and switches or turn-outs and one foot outside of each of their rails, through any street or portion thereof, through which said street railroad may pass, whenever the City Council shall deem it necessary to preserve an even and hard surface thereon; and such railroad company shall, and is hereby required to keep in repair, to the satisfaction of the Board of City Improvements, the space so paved and the space of the same width upon all unpaved streets during the continuance of this, their grant; provided that not more than one track shall be laid in any street or public highway without the consent of a majority in interest of the owners of property abutting thereon, and the consent of the Council being first had and obtained; and for the purpose of determining what is a majority in interest, reference shall be had to the assessed value of the whole of the property located upon such street or highway; and provided also, that such double track shall only be laid in
429 such parts of the streets or highways as are paved or about to be paved, when such double track shall be laid.

SECTION 5. Any individual or company to whom the privilege aforesaid shall be granted shall place and maintain upon said railways, the most approved cars, with all the modern improvements for the convenience and comfort of the passengers, and they shall run cars thereon as the public convenience may require, and under such directions as the City Council may from time — prescribe.

SECTION 6. And provided any such individual shall not charge more than the sum proposed in the proposition upon which said grant is awarded; for each passenger carried, which sum shall include all government and other taxes.

SECTION 7. And provided further, that the City of Cleveland shall not be held liable to any company for any damages that they may incur from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or for moving buildings over or along said track, or from any other delay or damage that may be caused by fire, water or otherwise. All rights vested in the City Council, the Trustees of Water Works, or Gas Company, in respect to the care and improvement of streets or highways, the construction of sewer, culverts, or drains, and the laying of water or gas pipes therein, and the necessary moving of buildings, thereon, are to be in no way impaired or affected by any privilege that may be granted to any individual or company, but the rights and privileges granted by virtue of this ordinance shall be subject thereto; and any company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants, in the management, construction or use of said tracks or railways and any such company shall indemnify and hold the City harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by reason thereof, or by running cars thereon.

430 SECTION 8. The President and Secretary of such and every such company shall, on the first Tuesday of June in

each year, during the continuance of the contract, furnish to the City Council, a full and complete list of the stockholders thereof, and such statement shall be verified by oath of said President and Secretary, to be administered by a Notary Public of Cuyahoga County, and attested by his seal.

SECTION 9. And be it further ordained, that the following specifications regulating the running of street railroads in the City of Cleveland, be submitted to by each and every company to whom the license shall be granted under the provisions of this ordinance, viz:

1st. While the cars are turning the corners from one street to another, the horses or mules shall not be driven faster than a walk.

2nd. Cars driven in the same direction shall not approach each other within a distance of three hundred feet: and the rate of speed for all cars shall be subject to the directions of the City Council from time to time.

3rd. No car shall be allowed to stop at a crosswalk, nor in front of any intervening street, except to avoid collision, or to prevent danger to persons in the street; nor shall any car be left standing in any street or highway, at any time, unless the same is attached to a team and waiting for passengers.

4th. When the conductor of any car is required to stop at the intersection of streets, to receive or to leave passengers the car shall be stopped so as to leave the rear platform slightly over the crosswalk.

5th. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially
431 children, either on track or moving towards it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

6th. The conductor shall not allow ladies and children to enter or leave the car while in motion.

7th. Conductors shall announce to the passengers the names of the streets or places wherever the cars cross in connection with any other railway track.

8th. The cars, after sunset, shall be provided with signal lights, and each shall at all times have a bell attached to some portion of the harness.

10th. The cars shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, provided sufficient time has been allowed such vehicle after notice has been given, so as to leave the track unobstructed; and the drivers of any vehicle refusing to do so, when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the Police Court, and costs of prosecution; and all fines collected under this section shall be paid to the City Treasury, to the credit of the school fund; Provided that if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the penalty attached by this section; provided that such person shall

have first obtained a permit for that purpose from the Board of City Improvements for such removal.

SECTION 11. That any company to whom the privilege of laying down a street railway through the streets or highways of Cleveland may be granted, is hereby required to keep clean and free from dirt, so much of the roadway of the different streets and
432 highways through — their railroad may pass, as may be occupied by their respective tracks, and that in all cases where said railroads pass through paved streets, the company shall cause the dirt or street cleanings removed along the line of their respective tracks to be placed in heaps in such manner as not to interfere with the free use of the streets by the public; and where said railroads pass through streets not paved, said company shall cause the dirt or street cleanings removed from along their tracks, to be distributed evenly over the surface of the street along their lines; and in all cases when it becomes necessary to remove snow or ice from said tracks, it shall be distributed evenly over the surface of the streets so as not to interfere with the free use and occupancy of the same by the public.

SECTION 12. Any company to whom the aforesaid privileges shall be granted is hereby required to pay their pro-rate share of the cost of sprinkling any street or highway through which their railroad may be built; whenever the City Council shall, by ordinance determine that such street or highway shall be sprinkled, and in order to determine what such pro-rate share may be, the area of the whole portion of the street or highway occupied by the tracks of such railroad company shall be computed, and the amount to be paid by such company shall bear the same relation to the whole cost of such sprinkling as the area of the street bears to the whole area sprinkled.

SECTION 13. It is further provided, that said companies shall perform all and singular the conditions of this ordinance, together with all and singular the further and future orders of the Council in relation to said railroad.

SECTION 14. That in case of failure to perform either of the above named conditions, the privileges granted to any company, under this ordinance, shall become null and void, upon the adoption of a resolution by the City Council to that effect.

433 SECTION 15. Any company who shall build any street passenger railway under this ordinance, shall be required to pay to the City of Cleveland a license fee of ten dollars per annum for each car or carriage placed upon their railway.

SECTION 16. No grant under the provisions of this ordinance shall be made for a longer period than twenty years from the date of each grant.

SECTION 17. That the terms and conditions of this ordinance, except so much of section four, as fixes the gauge of street railroads built under the same, shall be the terms and conditions governing the extension of all street railroads within the City of Cleveland.

SECTION 18. That any company, to whom the privileges herein named shall be granted, may be required to pay to the City Treasurer upon the estimates of the City Civil Engineer, the original cost of paving the space within the outer lines of their rails in all

streets that are paved, at the time such grant may be given; said amount to be pro-rated back to the owners of the abutting property.

SECTION 19. Any conductor who shall collect of any passenger more than the allowed legal fare, shall, with the officer of the company by whose order or direction he collects the same, be deemed guilty of a misdemeanor; and on conviction thereof in the Police Court, shall pay a fine of not less than five, nor more than twenty dollars for each offence.

SECTION 20. Any officer or employee of any street railroad company who shall violate any of the provisions of this ordinance, or aid or abet the same, shall be deemed guilty of a misdemeanor, and on conviction of the same in the Police Court, shall pay a fine of not less than five nor more than twenty dollars for each
434 offense.

SECTION 21. This ordinance shall take effect from and after its passage.

Passed Dec. 4th, 1866.

F. W. PELTON,
Pres. of the Council.

C. E. HILL,
City Clerk.

435 An Ordinance to amend section four of an ordinance entitled "An Ordinance prescribing the terms and conditions of Street Passenger Railways within the City of Cleveland."

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that Sec. 4 of an ordinance entitled "An ordinance prescribing the terms and conditions of Street Passenger Railways" be so amended to read as follows, viz:

SECTION 4. No more than one passenger railway, with such number of turn-outs or switches, and of such lengths as may be allowed by the City Council, shall be laid in any street or public highway; nor shall any track be laid within twelve feet of the sidewalk, except by the permission of the City Council. All tracks laid shall be of uniform gauge of four feet eight and one-half inches (4′ 8½″) and with a rail having a lower tramway of not less than three inches wide, and not more than eleven-sixteenths of an inch below the upper tramway; the outer edge to be at right angles to the lower surface of the rail, and laid in such a manner as to be no impediment to the free and ordinary use of the streets and passage of wagons, carriages and other vehicles, on or across such track at any point, and in any and in all directions, with suitable bridges a*l* all gutters, so as to permit the flow of water under the same, and on such grades as are now or may be hereafter established by the City Council, subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading or paving any street or highway, constructing sewers or laying water pipes therein. Any individual or company to whom any such privilege shall be granted by the City, shall be required to pay for paving with the same material as shall be recommended by the Board of City Improvements and adopted by the City Council, the space be-

tween the outer lines of the rails of their main tracks, and switch
or turn-outs, and one foot outside of the outer lines of each of th
rails, through any street or portion thereof, through which said ra
way may pass, whenever the City Council shall deem it necessary
preserve an even and hard surface thereon.

436 And such railroad company shall, and is hereby requir
to keep in repair, to the satisfaction of the Board of City I
provements, the space so paved, and the space of the same wid
upon all unpaved streets during the continuance of this, their gra
provided that not more than one track shall be laid in any str
or highway, without the consent of the majority in interest of t
owners of property abutting thereon, and the consent of the Coun
being first had and obtained; and provided also, that such doub
track shall *not* only be laid in such parts of the streets or hig
ways as are paved or about to be paved, when such double tra
shall be laid.

SECTION 2. That Section four (4) of the above-named Ordinan
to which this is amendatory, be and the same is hereby repealed, a
that this ordinance shall be in force and take effect on and after
passage.

Passed June 11th, 1867.

AMOS TOWNSEND,
Pres. of the Council.

C. E. HILL,
City Clerk.

(Here follows map marked page 437.)

FOLD OUT IS TOO LARGE TO BE FILMED

438 *Certificate of Incorporation of The East Cleveland Railroad Company.*

Know all persons to whom this may come, that this is to certify that we, Ephraim T. Sturtevant, Samuel E. Adams, Isaac Sherman, Milo Hickox, Robert Harlow, John Welch and Joseph Slaight, of the Township of East Cleveland in the County of Cuyahoga and State of Ohio, under and by virtue of the provisions of an act of the General Assembly of the State of Ohio passed May 1st, 1852, entitled "An act to provide for the creation and regulation of Incorporated companies in the State of Ohio," and the several acts amendatory and supplemental hereto, have, and hereby do, associate ourselves together as a body corporate under the name and style of the "East Cleveland Railroad Company" for the purposes of constructing, equip-ing and maintaining a Railroad, commencing at the intersection of the Euclid and Newburgh roads at Doans corners in said Township of East Cleveland, and running thence westerly to, and into the City of Cleveland in said County of Cuyahoga, and terminating at, or near the South westerly corner of the Public Square, with a capital stock of Fifty Thousand Dollars to be employed in the construction and equipment of said Railroad.

In witness whereof we have severally hereto set our hands and seal this 28th day of February 1859.

E. T. STURTEVANT. [SEAL.]
S. E. ADAMS. [SEAL.]
ISAAC SHERMAN. [SEAL.]
MILO HICKOX. [SEAL.]
ROBERT HARLOW. [SEAL.]
JOHN WELCH. [SEAL.]
JOSEPH SLAIGHT. [SEAL.]

THE STATE OF OHIO, *Cuyahoga County, ss:*

Before me Edwin Fuller one of the Justices of the Peace within and for said County, on this 28th day of February, 1859, personally appeared the above named Ephrain T. Sturtevant, Samuel E. Adams, Isaac Sherman, Milo Hickox, Robert Harlow, John Welch and Joseph Slaight who are known to me to be the persons
439 who executed the above certificate and acknowledged the same to — their free act and deed for the purposes in said certificate mentioned.

In witness whereof I have hereto set my official signature and seal this 28th day of February, 1859.

EDWIN FULLER, [SEAL.]
Justice of the Peace.

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Roland D. Noble, Clerk of the Court of Common Pleas, a court of record of Cuyahoga aforesaid, do hereby certify that Edwin Fuller before whom the above acknowledgement was made, was at its date

a Justice of the Peace in and for said County duly authorized by the laws of Ohio to take the same and that I am well acquainted with his handwriting and believe his signature thereto is genuine and that the above instrument is executed and acknowledged according to the laws of the state of Ohio.

[L. S.] In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Cleveland this 1st day of March, A. D. 1859.

ROLAND D. NOBLE, *Clerk.*

SECRETARY OF STATE'S OFFICE,
COLUMBUS, O., *March 2d*, 1859.

I hereby certify that the foregoing certificate of association of the East Cleveland Railroad is a true copy from the original now of file and of record in this office.

[L. S.] Witness my official signature and the great seal of the state at the time and place above written.

A. P. RUSSELL,
Secretary of State.

440 Sections 1, 16 and 17 of chapter 58 of the codified ordinances of the City of Cleveland, Passed March 12, 1877.

SECTION 1. Any individual or company to whom shall be granted the privilege of laying down rails for running street passenger cars, to be drawn by horses or mules through the streets of the city, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 16. No grant under the provisions of this chapter shall be made for a longer period than twenty years from the date of each grant.

SECTION 17. The terms and conditions of this chapter, except so much of section four as fixes the gauge of street railroads built under the same, shall be the terms and conditions governing the extension of all street railroads within the city.

441 Sections 973, 995 and 996 of the Revised Ordinances of the City of Cleveland, 1890.

SECTION 973. Every individual, company or corporation to whom shall hereafter be granted the privilege to construct and operate street railroads in the City of Cleveland, and all persons, companies and corporations operating roads already established, shall be guided, governed and regulated by the following and such further conditions and restrictions as the City Council shall hereafter ordain.

SECTION 995. No grant under the provisions of this chapter shall be made for a longer period than twenty-five years from the date of each grant.

SECTION 996. Any individual, company or corporation owning, operating or having the right to construct a street railroad, that desires to extend the same, or to lay an additional track or tracks to

be used in connection therewith, shall make application to the City Council in form as provided in Section 974 hereof, which application shall be referred to the Board of Improvements for consideration and report. Said Board shall, if it approves the same, prepare an ordinance providing for such extension, or the laying of such additional track or tracks, upon such terms and conditions not inconsistent herewith, as it shall deem just and proper, and shall transmit the same, together with the application, to the City Council; *Provided*, that before such ordinance is transmitted, the applicant for such grant shall file with said Board the written consent of a majority of the property holders on the line of the proposed street railroad represented by the foot front of lots abutting on the street along which such extension or additional track is proposed to be constructed, and *provided*, that no right in any such extension or additional track shall be made to continue beyond the period specified in the grant for the main line. Nothing herein contained shall operate to prevent the grant of a right to extend any road already in operation upon the same gauge now in use.

442 An Ordinance to permit the East Cleveland Railroad Company to extend its line of railway on Hayward street and Cedar avenue from Hayward street to Fairmount street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend its line of railway from the present track at the intersection of Prospect street and Hayward street southerly on and along said Hayward street to Cedar avenue, thence easterly on and along said Cedar avenue to Fairmount street, and to equip and operate said extension as a single track railway, with all necessary switches and turn-outs, in connection with its main line, and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or in said extension by reason of said extension, so that but one fare shall be charged between the eastern terminus of said extension and western terminus of its main line; Provided, that that part of said extension extending from the intersection of Prospect street and Hayward street to Giddings avenue shall be completed and in operation within six months after the passage of this ordinance, and that the balance of said extension, extending from said Giddings avenue to Fairmount street, shall be completed and in operation on or before the 1st day of June, 1883, also further provided, that when the right of way shall be granted from the intersection of said Hayward street, westerly on and along said Cedar avenue, and on and along Perry street from Cedar avenue to Prospect street, that said railroad company shall remove its track on Hayward street and build said track on and along said Cedar avenue and Perry street to the intersection of said Prospect street, there to connect with its main line, said removal and further extension to be constructed within sixty days after the passage of the proper ordinances and under the direction of the Board of Improveemnts.

443 SECTION 2. This grant is made subject to all ordinances of said City Council of the City of Cleveland now in force or which may hereafter be duly passed providing for the construction, operation and government of street railroads.

SECTION 3. That this ordinance shall be in force from and after its passage and legal publication.

Passed February 20, 1882.

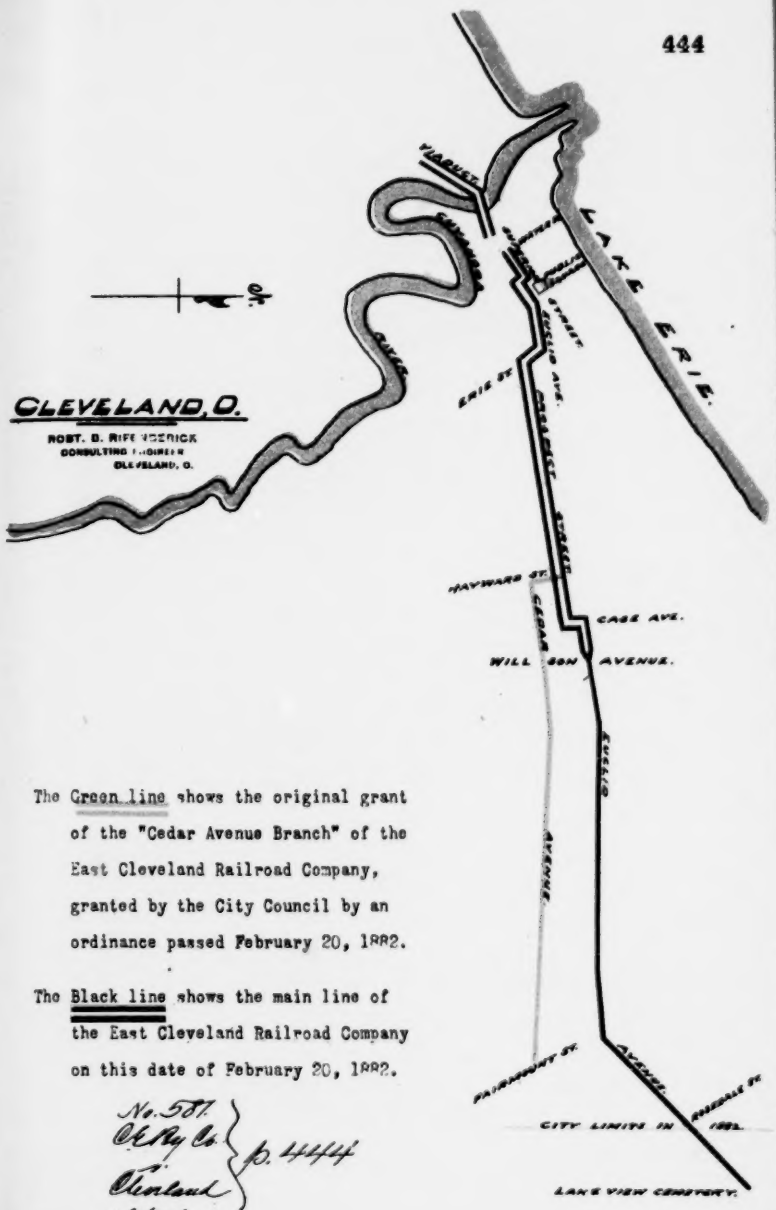
To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The East Cleveland Railroad Company hereby accepts the terms and conditions set forth in the ordinance, passed Feb. 20th, 1882, granting to the said company the right to construct and operate a street railroad upon certain streets of the city.

EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *Pres.*

Received March 6th, 1882.

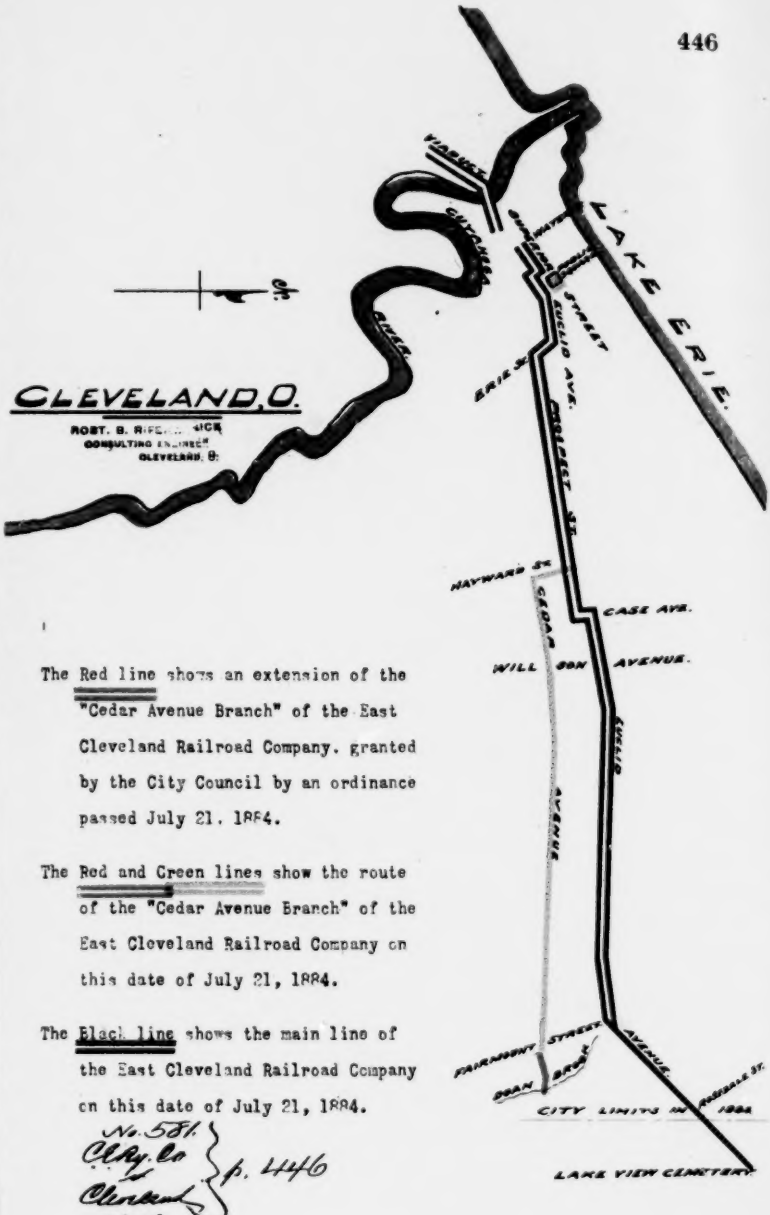
(Here follows map marked page 444.)



The Green line shows the original grant of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed February 20, 1882.

The Black line shows the main line of the East Cleveland Railroad Company on this date of February 20, 1882.

No. 581.
C. R. Ry. Co.
Cleveland
Sheet.
p. 4444



The Red line shows an extension of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed July 21, 1884.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of July 21, 1884.

The Black line shows the main line of the East Cleveland Railroad Company on this date of July 21, 1884.

No. 581.
Cl. Ry. Co.
Cleveland
Stat.
p. 446

445 An ordinance to permit the East Cleveland Railroad Company to extend the Cedar avenue branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Cedar avenue branch of its railway from the termination of its present track at the intersection of Cedar avenue and Fairmount street in an easterly direction on and along said Cedar avenue to Doan brook and equip and operate said extension as a single track railroad in connection with said branch and its main line and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension, by reason of said extension, and further provided that said extension shall be completed and in operation within thirty days after said avenue is graded as contemplated. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads; Provided also that said company shall pave with stone between the rails of said track along the line of said extension at the time of the construction of the same and shall keep the same paved during the term of its grant.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 21, 1884.

(Here follows diagram marked page 446.)

447 *Ordinance No. 64.*

An ordinance to grant the East Cleveland Railroad Company permission to lay a double-track railroad in Perry street and Cedar avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to lay a double-track railroad in and along Perry street and Cedar avenue as follows, to wit: Said tracks to connect with the tracks of said company on Prospect street, at Perry street; thence southerly on Perry street to Cedar avenue; thence easterly on Cedar avenue to connect with the track of the Cedar avenue branch of said company at Hayward street, as shown on the plan accompanying the petition of said company.

SECTION 2. Said company shall construct, equip, maintain and operate said road when constructed, as an extension of their Cedar avenue branch of their street railroad, and shall pave the space between the outer rails of said double track with cobble stones, split and laid in cement, at said company's own expense, under the direction of the City Civil Engineer.

SECTION 3. That in case of failure by neglect or otherwise on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, or the general ordinances of the city governing street railroads now or hereafter in force or amendments thereto, the privilege herein granted shall become void and of no effect, and shall cease upon the passage of an ordinance to that effect. The rights herein granted shall terminate at the expiration of the present charter for the said company's main line.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication, and the payment by said company of the expense of publishing the same, and the filing in the
448 office of the City Clerk a written acceptance of the terms and conditions hereof.

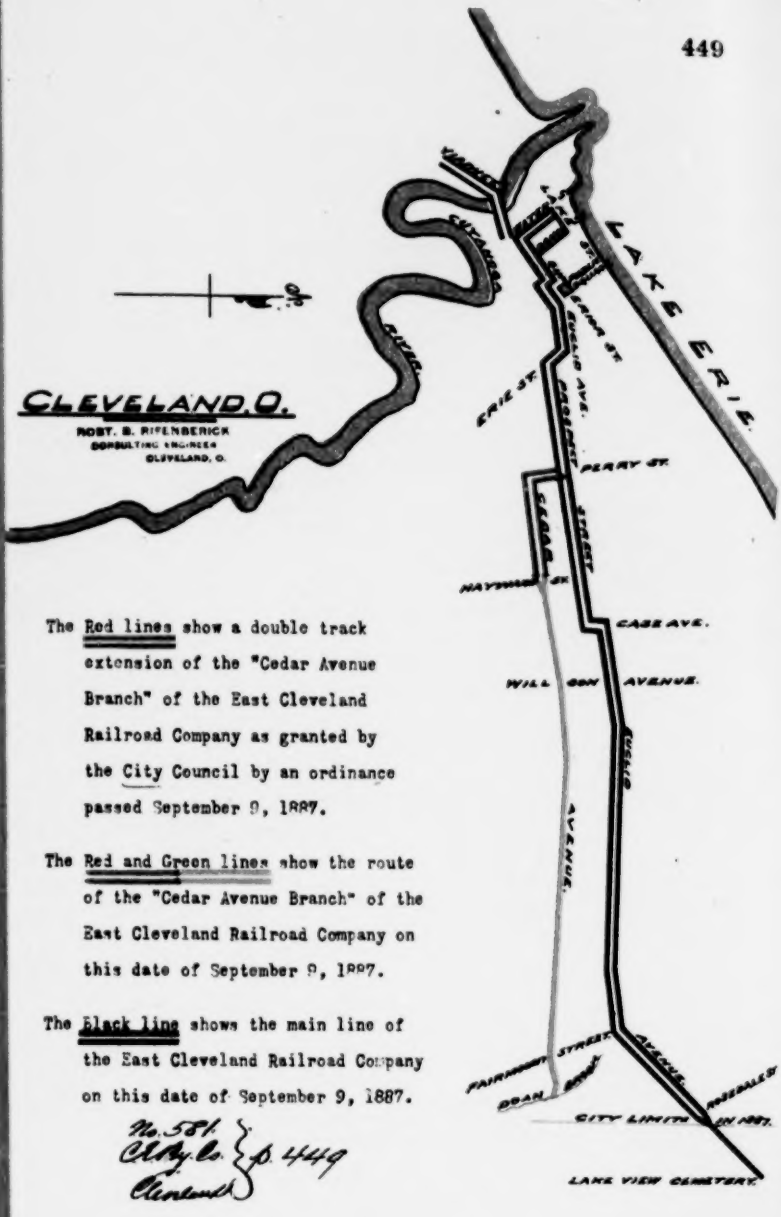
W. M. BAYNE,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Passed Sept. 9, 1887.

Approved Sept. 10, 1887.

D. D. BABCOCK, *Mayor.*

CHARLES P. SALEN,
City Clerk.



The Red lines show a double track extension of the "Cedar Avenue Branch" of the East Cleveland Railroad Company as granted by the City Council by an ordinance passed September 9, 1887.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of September 9, 1887.

The Black line shows the main line of the East Cleveland Railroad Company on this date of September 9, 1887.

No. 581
Cl. Ry. Co.
Cleveland
p. 449

Acceptance.

CLEVELAND, OHIO, *Sept.* 12, 1887.

To the Honorable the Common Council of the City of Cleveland.

GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. 64, granting us the permission to build, equip and operate a double track extension of our Cedar Avenue line from Hayward street westerly to Perry street, and northerly upon Perry street to connect with our tracks on Prospect street.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

(Here follows diagram marked page 449.)

450 *An Ordinance.*

An ordinance to grant the East Cleveland Railroad Company the permission to lay a second or additional track in Cedar avenue from Hayward street to Willson avenue.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors and assigns, be and is hereby authorized and empowered to lay a second or additional track in and upon Cedar avenue, from the easterly line of Hayward street, in and along said Cedar avenue to the easterly line of Willson avenue, and to connect the tracks herein authorized with the tracks now laid upon Cedar avenue west of Hayward street and east of Willson avenue, as per plat accompanying the petition of said company.

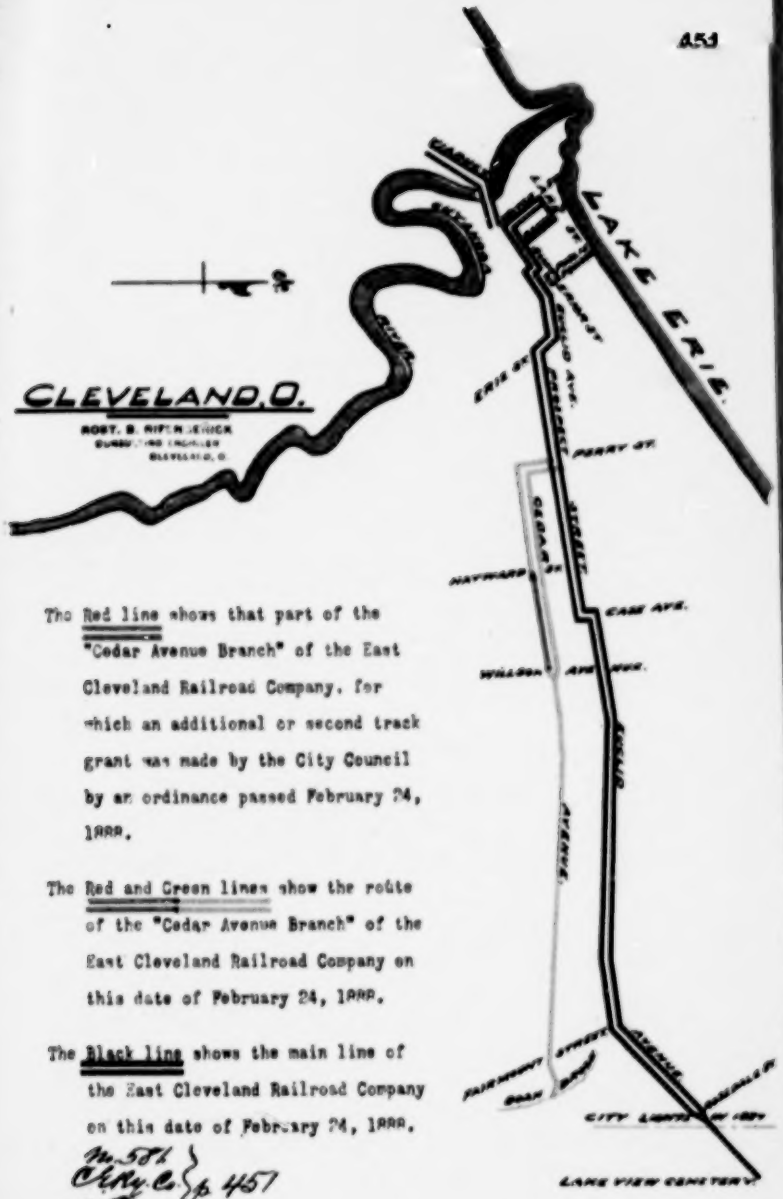
SECTION 2. Said company shall pave the space between the outer rails of said double track with cobblestones, split and laid in cement, at said company's own expense, under the direction of the Board of Improvements.

SECTION 3. That in case of failure, by neglect or otherwise, on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance of the general ordinances of the city governing street railways now or hereafter in force, the privilege herein granted shall become void and of no effect and shall cease upon the passage of an ordinance to that effect. The right herein granted shall be valid until the expiration of the grants for the said company's main line.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication and the payment by said company of the expense of publishing the same and the filing in the office of the City Clerk a written acceptance of the terms and conditions thereof.

Passed by the Common Council February 24, 1888.

(Here follows diagram marked page 451.)



The Red line shows that part of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, for which an additional or second track grant was made by the City Council by an ordinance passed February 24, 1888.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of February 24, 1888.

The Black line shows the main line of the East Cleveland Railroad Company on this date of February 24, 1888.

No. 581
Cl. Ry. Co. } p. 457
Cleveland

452 *An Ordinance.*

An ordinance to grant the East Cleveland Railroad Company the right to construct and operate a second or additional track upon Cedar avenue from Bolton avenue easterly to the easterly limits of the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors or assigns be and is hereby authorized and empowered to lay and operate a second or additional track in and upon Cedar avenue from Bolton avenue easterly to the city limits, and connecting with tracks now in Cedar avenue at Bolton avenue and the city limits, upon the following conditions:

SECTION 2. That said street railroad company owning or operating said street railroad upon any portion of said street, between the points aforesaid shall, upon notice from the Board of Improvements, be required to grade, pave and improve, at its own expense, the space between the rails of each and all of its tracks, switches and turn-outs, and the space between the two tracks, and pay to the city on demand the cost of setting back the curb to such width of roadway as the Board of Improvements may direct, and gas and water connections and catch basins, and for all new curb required and setting the same; said work to be done under the direction and to the acceptance of the Board of Improvements at the same time or before the street is paved and with the same material and quality of paving as the balance of the roadway shall be paved.

SECTION 3. This ordinance shall take effect and be in force from and after its passage and acceptance in writing by said railroad company, and the payment to the City Comptroller for adver-

453 tising the same.

SECTION 4. This ordinance is subject to all ordinances now in force or that may hereafter be passed governing and regulating street railroads and all ordinances or resolutions of the City Council relative to the improvements of the street upon which said double tracks are to be laid, and the rights herein granted shall expire with the grants for said company's main line, *i. e.*, July 14, 1913.

Passed Oct. 13, 1890.

F. O. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *Oct.* 23, 1890.

To the Honorable, the City Council, of the City of Cleveland.

GENTLEMEN: We would respectfully accept the terms, conditions, limitations and restrictions of Ordinance 1472 passed by your Honorable Body on Oct. 13th, 1890, entitled: "An Ordinance to grant the

East Cleveland Railroad Company the right to construct and operate an additional track upon Cedar avenue from Bolton avenue easterly to the easterly limits of the City of Cleveland," and hereby agree to comply with the requirements thereof, as above stated.

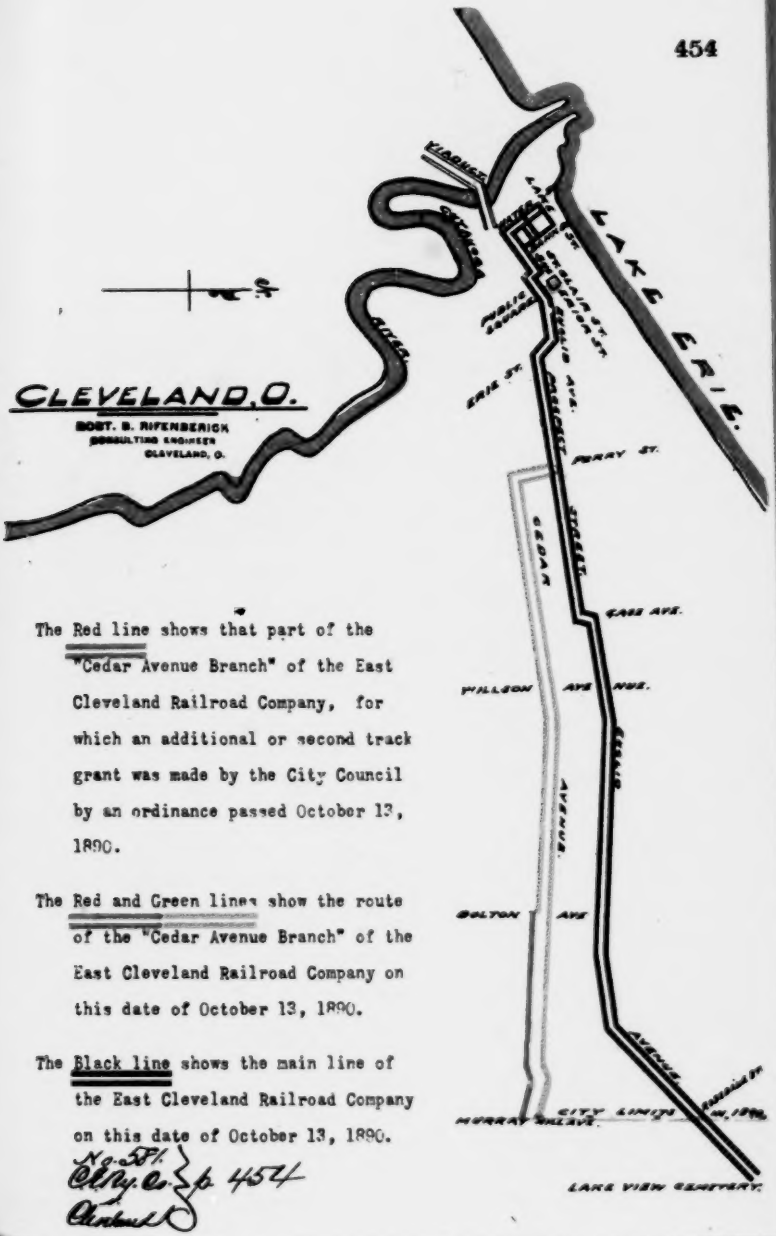
Respectfully submitted,

By A. EVERETT, *President.*

Attest: H. A. EVERETT, *Sec.*

Received Oct. 27, 1890.

(Here follows diagram marked page 454.)



The Red line shows that part of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, for which an additional or second track grant was made by the City Council by an ordinance passed October 13, 1890.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of October 13, 1890.

The Black line shows the main line of the East Cleveland Railroad Company on this date of October 13, 1890.

No. 5 ½
Cl'd Ry. Co. } p. 454
Exhibit

455 *Ordinance No. 693.*

An ordinance to grant the East Cleveland Railroad Company the right to extend its street railroad along and upon Case, Perkins, Willson, Hough, Dunham and Wade Park avenues, and to operate said extension by electricity or horse power.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors and assigns, are hereby authorized and empowered to extend their line of street railroad as a double track railroad, with the necessary curves and crossovers as determined and approved by the Board of Improvements, from the intersection of Euclid and Case avenues, in a northerly direction in Case avenue to Perkins avenue, thence easterly in Perkins avenue to Willson avenue; thence northerly in Willson avenue to Hough avenue; thence easterly in Hough avenue to Dunham avenue; thence northerly in Dunham avenue to Wade Park avenue; thence easterly in Wade Park avenue to the easterly limits of the city, in accordance with the plan of said tracks, curves and cross-overs, filed with the Board of Improvements the seventh day of Sept., 1888, and said extension herein authorized to be constructed and operated on or before July 1, 1889, in accordance with the general street railroad ordinance of the city and subject to the approval of the Board of Improvements.

SECTION 2. That if the motive power to operate the extension herein provided for, shall be by electricity, the nature, kind and height of poles and wires or other appliances necessary for its successful operation upon the public streets shall be under the control and subject to the approval of the Board of Improvements and City Civil Engineer, and said railroad company shall pay the city for all engineering and supervision deemed necessary in the proper construction, and placing of said tracks, paving, wires, poles, etc.

456 SECTION 3. That in all cases where pavements are now laid or in contemplation on the line of said proposed extension, said company shall grade and pave, or repave, as the case may be, at its own expense, the entire space from outer rail to outer rail, or fourteen feet in width, of all of its tracks, curves and crossovers, with the same material and kind of pavement as is laid in or contemplated for the balance of the adjoining roadway, and in case of streets now paved shall take up and relay so much of said pavement as may be required to make a good job, and upon all streets upon the balance of said route not so paved, nor in contemplation, the fourteen foot space between the outer rails shall be paved with the best quality of common Medina stone pavement laid dry, as specified for city work, all to the satisfaction and acceptance of the Board of Improvements at the same time that said tracks are laid or constructed; and in all cases upon any street where it becomes necessary in the judgment of said Board of Improvements, by reason of the laying of said tracks, to widen the roadway of any of said streets, either by setting back the curb or changing the gutters, lamp posts, water boxes, catchbasins or other improvements, all such widening

or changes shall be made at the expense of said railroad company upon the orders and to the acceptance of the Board of Improvements, whether required at the time of laying said tracks or at any subsequent time.

SECTION 4. That said permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or of said extension, and but one fare not exceeding five (5¢) cents, or one of said railroad company's tickets, shall entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water streets.

457 SECTION 5. That said Council reserves to itself the right to grant to any person or persons, company or corporation, a joint use, for street railroad purposes, of the tracks and appliances, trol-ey wires, poles, electricity, etc., herein provided for, upon said Willson avenue, between Perkins avenue and Hough avenue and upon Wade Park avenue between Dunham avenue and the easterly limits of the city, upon such terms and conditions as said Council shall deem just and reasonable, in case of failure of companies to come to an agreement, and that the right to construct and operate the extension of said double tracks and appliances, as herein provided for, shall terminate with the present grant for said East Cleveland Railroad Company's main line.

SECTION 6. That this grant is given to said East Cleveland Railroad Company, subject to the provisions of this ordinance, and the general ordinance regulating street railroads in the city of Cleveland, and all other ordinances now in force or that may be hereafter passed regulating street railroads and amendments thereto or hereto.

SECTION 7. That said railroad company shall file with the City Clerk, within thirty (30) days after the passage of this ordinance, a written acceptance of the conditions and privileges herein granted and therein agree to comply with and adopt and abide by all the provisions, conditions and instructions upon which the same are granted, and such acceptance of the terms of this ordinance shall be deemed an agreement by said company with the City of Cleveland to perform all and singular the conditions and things required of said company under this ordinance, otherwise this ordinance shall be null and void.

SECTION 8. That this ordinance shall be in force from
458 and after its passage and legal publication.

M. M. HOBART,
Pres. of the Council.

Passed April 12, 1889.
Approved by the Mayor.

CHARLES P. SALEN,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *April* 29, 1889.

To the Honorable City Council of the City of Cleveland, Ohio.

GENTLEMEN: We would hereby respectfully accept the conditions, privileges, provisions, and instructions of an Ordinance passed by your Honorable Body on April 12, 1889, and numbered 693, and entitled "An Ordinance to grant the East Cleveland Railroad Company the right to extend its street railroad along and upon Case, Perkins, Willson, Hough, Dunham and Wade Park avenues, and to operate said extension by electricity or horse power.

And that we will proceed at once to extend and construct said street railroad in pursuance thereof.

Respectfully submitted by order of the Board of Directors.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*
Office 1154 *Euclid Avenue.*

Received.

459 The East Cleveland Railway Company.

July 17, 1889.

This day came on to be heard the application of the East Cleveland Railway Company to occupy Lyman avenue from the limits of the City of Cleveland at Wade Park avenue to Euclid avenue, for the purpose of constructing thereon a single or double track railroad and operate the same by horses or electricity, and this part being specified that the owners of all of the property abutting upon said Lyman avenue, between the limits of the City of Cleveland at Wade Park avenue and Euclid avenue have consented to the occupancy of said street by said railroad company. The application of the said East Cleveland Railroad Company to occupy said street as aforesaid is hereby granted subject to the following terms and conditions:

1. The grade of the roadbed shall conform to the grade of said street as nearly as practical, and if at any time in the future the grade on said street is changed, said property owners shall change the grade of their roadbed to conform to the grade as so changed.

2. The space between the tracks so laid on said Lyman avenue shall be filled so as to form a good, firm roadbed for the use of teams, and the track shall be constructed and maintained so *as* that vehicles can be easily driven on or over said railroad track.

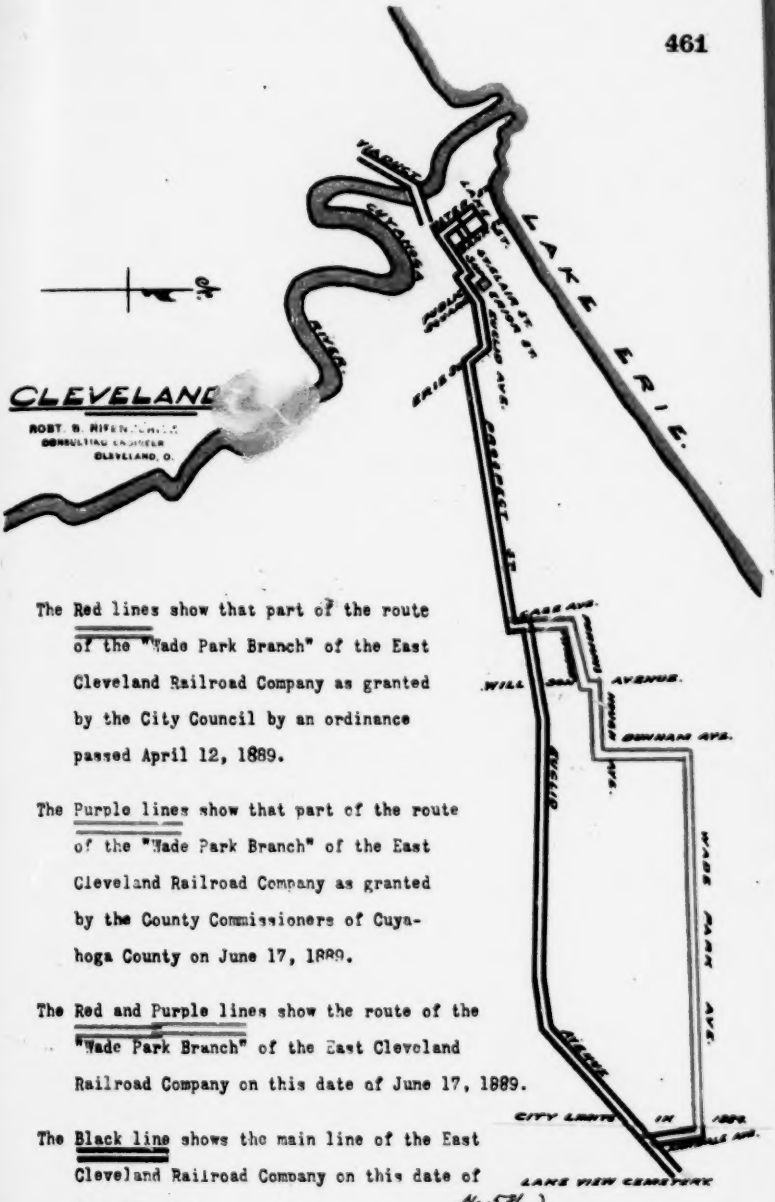
3. Whenever the property owners on said street shall deem it necessary to grade or regrade, to pave or repave or sewer the whole or any portion of said avenue occupied by said company, said company shall at its own expense, take up and relay its tracks and pave or grade

that portion of the street occupied by its tracks in the same manner as the balance of said street is paved by the property owners.

460 4. This grant is made upon the express compliance with the above condition, and for the length of time that said petitioner have the permission of the City of Cleveland to occupy Wade Park avenue.

Carried: Yeas—Schlatterback, Jerome and Mattison.
Nays—None.

(Here follows diagram marked page 461.)



The Red lines show that part of the route of the "Wade Park Branch" of the East Cleveland Railroad Company as granted by the City Council by an ordinance passed April 12, 1889.

The Purple lines show that part of the route of the "Wade Park Branch" of the East Cleveland Railroad Company as granted by the County Commissioners of Cuyahoga County on June 17, 1889.

The Red and Purple lines show the route of the "Wade Park Branch" of the East Cleveland Railroad Company on this date of June 17, 1889.

The Black line shows the main line of the East Cleveland Railroad Company on this date of June 17, 1889.

No. 58 Cl. Ry. Co. Cleveland } p. 461

462 Endorsements: No. 6851. In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and the Forest City Railway Company, Defendants. Ordinances, resolutions, communications, maps, etc., relating to the Garden Street branch and main line of the East Cleveland Railroad Company and its successor the Cleveland Electric Railway Company to which reference has been made in the bill of complaint, answer to same, and in the arguments of council to the court. Compiled and drawn by Robt. B. Rifenberick, Consulting Engineer, 1522 Williamson Bldg., Cleveland, Ohio. Filed Jan. 2, 1906. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

463 (*Opinion of the Court.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Opinion of the Court.

TAYLER, *J.* (orally, at close of argument):

I have already held, and unqualifiedly adhere to the holding, that the right of the complainant company to maintain a railroad in the streets comprising this street railroad route expired on the twenty-second day of last March.

But that does not carry with it a change in the title to the physical property placed on the streets by the railway company. I have no doubt at all that the property in the street is the property of the railroad company; and it cannot be taken without due process of law. Exactly how the City should or may proceed to bring about its removal, the officials of the City have doubtless given more thought to than the Court. It is the railroad company's property in the street, and its rights in it can only be affected by resorting to proceedings as dignified and careful as if they were rights of property of a private individual, resting upon his own land.

So, of course, there can be no injunction against the City's proceeding, by lawful method, to exercise the rights that it has in the streets, and against the claim of the railroad company that it has a right to remain there. This is the opinion of this Court.

464 I am very well satisfied that the ordinance is invalid under which The Forest City Railway Company, defendant herein, undertakes to assert rights in the street, both because a renewal cannot be granted to other than the owner of an original grant, and also because this ordinance seeks to take property without due process of

law. It also violates the Constitution of the State of Ohio, if it is to be deemed to be in the nature of an appropriation proceeding, in that it does not provide that the value of the property to be taken should be paid, or secured to be paid, in cash. But I want to look at the argument in that respect, for I have not given the subject connected or serious consideration.

But, as it seems to the Court, the question comes simply to the form of the injunction, and what is to be enjoined. Certainly the City cannot be enjoined from using any implements that it has, and may property use, to exercise its rights in the streets.

I suppose that if The Forest City Railway Company has an ordinance that is invalid, and undertakes, by reason of that ordinance, and by the machinery devised in it, to take possession of the property, the City could not claim that it was *its* method of taking possession of the property. That would be an illegal way of doing so.

The Forest City Railway Company, doubtless, under the language of the bill and answer, and the qualifications put by The Forest City Railway Company upon its claimed right, could be enjoined,—and probably in this case would have to be enjoined,—from interfering with the railroad company, insofar as its interference affected property rights in the property in the streets.

Whether it would be the duty of the Court to declare the ordinance void, as a definitive finality ,if it found that it was void, and
465 for that reason hold that The Forest City Railway Company had no right to interfere with the possession of property in the streets by the complainant, is not so clear. The mere fact that the Court finds, as a predicate to its conclusion, a certain thing, does not, of necessity, justify the Court in doing that which amounts to a judicial determination declaring it void.

I do not know that there is any substance in the distinction, or whether it is important or not. If the Court finds that The Forest City Railway Company has no right to interfere with the property of the complainant, because the claim upon which The Forest City Railway Company bases its right to interfere with it is unfounded in law, and rests upon an invalid ordinance, that is enough; that accomplishes the purpose.

This is not an action for the purpose of declaring an ordinance void—

Judge SANDERS: It certainly is intended to have that effect.

The COURT: I appreciate the accuracy of counsel's observation, and yet do not yield that there is any inaccuracy in my statement. What I mean is that it is not for the purpose of declaring it void, as a general proposition, affecting everybody. It is of no interest to the complainant whether the ordinance is void or valid, except as it affects the rights of the complainant in the streets. It does not bring the action as a citizen, but it prosecutes this action under a right just as high, in that it affects its own property.

For instance, in the case that was brought in the State Court here; that was a proceeding seeking to declare the ordinance void, and that was all. This is not a proceeding of that character.

But the Court does not want to take up as much time as counsel did in making observations.

466 Judge SANDERS: Does the Court desire counsel to submit a form of decree?

The COURT: I think counsel understand what it is that the Court thinks the decree ought to cover. I have not read the prayer of the bill, nor the averments of the answer, in respect to that property; but I suppose that the complainant is entitled to an injunction against The Forest City Railway Company, and it would be entitled to an injunction against the City if there was any claim that the City was undertaking, through the instrumentality of this ordinance, to——

Judge SANDERS: That is submitted in as broad terms as the other.

Mr. WESTENHAVER: We don't agree with that observation.

The COURT: The Court will not agree to a decree that is not fully expressive of what is recognized or bound to be a fact. If it is perfectly apparent, upon the theory that the Court has been proceeding on, that the City is undertaking to interfere with complainant's possession of its own property, through the instrumentality of an illegal ordinance why that is an illegal act, and must be enjoined.

The City has its rights in those streets, which it can simply assert; and so I say that, if that situation appears in the pleadings, then, to that extent, and in that form, the complainant would be entitled to an injunction against the City. But it would not be entitled to any injunction against the City's proceeding to do such acts in Central Avenue and the other streets along which this track is laid as they could do with respect to any other street upon which any other person had a structure, or was maintaining that which was there without authority of law. Its rights are the same there as elsewhere.

467 The Court holds that The Forest City Railway Company has no more rights in the streets than the complainant,—and not as many, because the complainant's property is there; and this property, if removed by the City, must be removed in some way that corresponds with the proprieties of the law.

R. W. TAYLER.

November 18, 1905.

(Endorsements:) 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Opinion of the Court. Form of decree. Filed Nov. 18, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

468 (*Decree.*)

October Term, A. D. 1905, towit: December 4th, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Decree.

This cause came on to be heard at this Term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

First. That the right of the complainant to maintain and operate its street railroad upon the street railway route described in the ordinance of the City of Cleveland, passed January 11, 1904, and set forth in the Bill, that is to say, "Commencing at the intersection of Prospect and Erie Streets in the City of Cleveland; thence southerly on, over and along Erie Street to Central Avenue; thence easterly, on, over and along Central Avenue to Lincoln Avenue. Also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly, on, over and along Quincy Street to Woodland Hills Avenue; "expired on the twenty-second day of March, 1905.

Second. That said ordinance of the City of Cleveland, passed January 11, 1904, described in said bill of complaint, entitled "An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroad in the following streets," is inoperative to confer upon the defendant, The Forest City Railway Company, any legal right to take the tracks, poles, wires and appliances erected and maintained by the complainant in and along the aforesaid streets, in this: that said ordinance authorizes the taking of the property of the complainant without due process of law.

469 *Third.* That The Forest City Railway Company, its officers, agents and employees, and each of them, be, and they are hereby, enjoined and prohibited from in any manner taking possession of, or interfering with the complainant in the peaceable possession of, its tracks, poles, wires and other appliances, in use by it in connection with the operation of its railroad upon the streets described in said ordinance of said City of January 11, 1904; and that the City of Cleveland, its officers, agents and employés, and each of them, be, and they are hereby, enjoined and prohibited from in any manner attempting, by virtue of said ordinance, to put the defendant, The Forest Cty Railway Company, into possession of said tracks, poles, wires and other appliances.

Fourth. That the costs in this case be paid, one-half by the complainant, and one-half by the defendant, The Forest City Railway Company.

470 (*Petition for Appeal.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Petition for Appeal.

The above named complainant, The Cleveland Electric Railway Company, a corporation, deeming itself aggrieved by the decree made and entered in the above entitled cause on the 4th day of December, A. D. 1905, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors hereto annexed and herewith filed, and it prays that this appeal may be allowed and that a transcript of the record and proceedings, and papers, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that said decree may be reversed.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for The Cleveland Electric Railway Company.

Dated this 30 day of December, 1905.

Assignment of Errors.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Assignment of Errors.

471 The above named complainant, The Cleveland Electric Railway Company, for assignment of errors in the decree made in the above entitled cause, entered on the 4" day of December, 1905, and from which an appeal to the Supreme Court of the United States has this day been filed, assigns the following:

1. It was error in said circuit court to adjudge and decree that the right of complainant to operate its street railroad upon the street railway route described in the ordinance of the City of Cleveland, passed January 11, 1904, and set forth in the bill, that is to say, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City, thence easterly on, over and along Quincy Street to Woodland Hills Avenue, expired on the 22nd of March, 1905.

2. It was error in said circuit court to adjudge and decree that the right of complainant to operate its street railway upon the Central Avenue route, in the bill of complaint described, expired on the 22nd day of March, 1905.

3. It was error in said circuit court to refuse to adjudge and decree that the ordinance of January 11, 1904, set forth in the bill of complaint, impaired the contract right of complainant with the City of Cleveland in this, namely, that whereas complainant was by contract authorized to maintain and operate its Central Avenue street railway route until at least July, 1913, said ordinance of January 11, 1904, deprived the complainant of the exercise of such right and undertook to terminate its right of operation of said Central Avenue route on the 22nd day of March, 1905, and was, therefore, null and void.

472 4. It was error in said circuit court to refuse to adjudge and decree the ordinance of January 11, 1904, set forth in the bill of complaint, void, because it was an ordinance purporting to renew to the Forest City Railway Company a grant which at the time of said attempted renewal belonged to the complainant.

5. It was error in said circuit court to refuse to declare said ordinance of January 11, 1904, described in said bill of complaint, void, and in refusing to enjoin both the City of Cleveland and The Forest City Railway Company from taking any action whatever in pursuance of the terms of said void ordinance.

6. It was error in said circuit court to adjudge that one half of the costs should be paid by the complainant.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Cleveland Electric Railway Company.

(Endorsements on Petition for appeal and assignment of errors:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* The City of Cleveland, *et al.*, Defendant-. Petition for Appeal. Filed Dec. 30, 1905, Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

(Order Allowing Appeal.)

October Term, A. D. 1905, to-wit: December 30th, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The above-named complainant, The Cleveland Electric Railway Company, a corporation, desires to appeal to the Supreme
473 Court of the United States from the decree entered in this cause on the 4th day of December, A. D. 1905; and having presented its petition praying for said appeal, accompanied by an assignment of errors on which it relies, and the same having been duly considered by the court,—

It is ordered, adjudged and decreed, that said appeal be allowed to and from said decree.

And it is further ordered that the amount of bond to be given upon said appeal be and the same is hereby fixed at the sum of five hundred dollars, conditioned for the payment by the complainant of the costs in the action in case it does not make good its appeal as provided by law; and that an authenticated transcript of the record and proceedings and papers used and upon which said decree was rendered in this court, be forthwith transmitted, duly certified and verified, to the Supreme Court of the United States, according to the law in such cases made and provided.

Done in open court this 30th day of December, A. D. 1905.

(Bond on Appeal.)

Know all men by these presents, That we, The Cleveland Electric Railway Company, as principal, and Wm. B. Sanders as sureties, are held and firmly bound unto The City of Cleveland and The Forest City Railway Company in the full and just sum of Five hundred dollars to be paid to the said The City of Cleveland and The Forest City Railway Company, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30″ day of December in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States
474 for the Northern District of Ohio, Eastern Division in a suit depending in said Court, between The Cleveland Electric Railway Company, Complainant and The City of Cleveland and The Forest City Railway Company, Defendants, a decree was rendered

against the said The Cleveland Electric Railway Company and the said The Cleveland Electric Railway Company having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the — in the aforesaid suit and a citation directed to the said The City of Cleveland and The Forest City Electric Railway Company citing and admonishing them to be and appear at a session of the United States Supreme Court on the — day of ——, next.

Now, the condition of the above obligation is such, that if the said The Cleveland Electric Railway Company, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

THE CLEVELAND ELECTRIC RAILWAY CO.,
[SEAL.]
By SQUIRE, SANDERS & DEMPSEY, *Its Atty's*
[SEAL.]
WM. B. SANDERS.
[SEAL.]

Sealed and Delivered in Presence of

—— ——.

—— ——.

Approved by
R. W. TAYLER, *Judge.*

(Endorsements on Bond on Appeal:) No. 6851. The Cleveland Electric Railway Company *v.* The City of Cleveland and The Forest City Railway Company. Bond on appeal to the United States Supreme Court. Filed Jan. 2, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

475 (*Precipe for Transcript.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

To the Clerk:

You are requested to prepare a transcript of record in the above entitled cause to include all record, pleadings, papers, orders and testimony filed therein for filing in the Supreme Court of the United States.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for The Cleveland Electric Ry. Co.

(Endorsements:) No. 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company *vs.* The City of Cleveland, and The Forest City Railway Company. Precipe for Transcript of record to U. S. Supreme Court. Filed Jan. 12, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

476 UNITED STATES OF AMERICA, *ss:*

To the City of Cleveland and The Forest City Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Eastern Division of the Northern District of Ohio, wherein The Cleveland Electric Railway Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd., day of January, in the year of our Lord one thousand nine hundred and six.

ROBERT W. TAYLER,
United States District Judge Presiding in Circuit Court.

Service of the above citation is hereby acknowledged and appearance of appellees is hereby entered.

NEWTON D. BALLU,
For the City of Cleveland.
THE FOREST CITY RAILWAY COMPANY,
By D. C. WESTENHAVER, *Its Attorney of Record.*

January —, 1906.

477 (*Certificate of Clerk.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States for said District, do hereby certify that the annexed and foregoing pages contain a true and complete copy of the final record and evi-

dence, including the petition for appeal, assignment of errors and all proceedings in said cause; and there is embraced in such record, true copies of the opinions of the Court, the originals of all which remain in my custody as clerk of said court, and there is also attached to and transmitted with said record, the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said court, at Cleveland, in said district, on this 20th day of January, A. D. 1906 and in the 130th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk,*
By JAMES C. MUNN,
Deputy Clerk.

Endorsed on Cover: File No. 20,083. N. Ohio, C. C. U. S. Term No. 581. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company. Filed February 5th, 1906. File No. 20,083.

1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

Record of the proceedings of the Circuit Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said Court begun and held at the City of Cleveland, in said District on the first Tuesday in October, being the third day of said month in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth; to-wit: on the 4th day of December, A. D. 1905.

Present: The Honorable Robert W. Tayler, United States District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

Said action was commenced on the 21st day of March A. D. 1905, and proceeded to final disposition at the term and day above written. An appeal was taken from the above mentioned decree on December 30th, 1905 to the Supreme Court of the United States by the complainant, and on May 24th, 1906 a cross-appeal is taken by the defendants, in which cross-appeal proceeding the following papers and pleadings were filed and orders of the Court were made and entered in the order and on the dates hereinafter stated, to-wit:

2 (*Petition for Appeal.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Petition for Appeal.

The above named defendants, the City of Cleveland, and The Forest City Railway Company, deeming themselves aggrieved by the decree made and entered in the above entitled cause on the 4th day of December, 1905, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors hereto annexed and herewith filed, and they

pray that this appeal may be allowed and that a transcript of the record of proceedings and papers upon which said decree was made may be sent to the Supreme Court of the United States, and that said decree may be reversed.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

Dated this 18th day of May, 1906.

(Endorsements:) No. 6851. U. S. Cir. C't North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Plaintiff *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Petition for Appeal. Filed May 24, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Cleveland, O., Attorneys for Defendants.

3 (*Assignment of Errors.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant-.

Assignment of Errors.

The above named defendants, the City of Cleveland and The Forest City Railway Company, for assignment of errors in the decree rendered in the above entitled cause on the 4th day of December, 1905, from which an appeal to the Supreme Court of the United States has this day been filed assigns the following:

I. It was error in said Circuit Court to adjudge, order and decree that the ordinance of the City of Cleveland passed January 11, 1904, described in the bill of complaint, and entitled, "An Ordinance granting to The Forest City Railway Company, its successors and assigns the renewal right to maintain and operate the existing street railroad in the following streets, etc." was inoperative to confer upon said The Forest City Railway Company any legal right to take the tracks, poles, wires and appliances erected and maintained by the complainant in said streets.

II. It was error in said Circuit Court to adjudge, order and decree that said ordinance was inoperative because the same attempted to authorize the taking of any property of the complainant without due process of law.

III. It was error in said Court to enjoin and prohibit The Forest City Railway Company from taking possession of or interfering in any manner with the peaceable possession of the tracks, poles,
4 wires and other appliances used by the complainant in connection with the operation of its railroad upon the streets described in said ordinance of the City of Cleveland passed on the 11 day of January, 1904.

IV. It was error in said Circuit Court to enjoin and prohibit the City of Cleveland, its officers, agents and employees and any of them from attempting in any manner by virtue of said ordinance to put the defendant, The Forest City Railway Company, into possession of said tracks, poles, wires and other appliances.

V. It was error in said Court not to have dismissed the complainant's bill at the hearing thereof at the costs of the complainant.

Given under our hands this 18 day of May, A. D. 1906.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

(Endorsements:) Filed May 24, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

5 (*Order Allowing Appeal.*)

April Term, A. D. 1906, to-wit: May 24, 1906.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The above named defendants, the City of Cleveland and The Forest City Railway Company having this 24 day of May, 1906, presented their petition in open court praying an appeal to the Supreme Court of the United States from the decree made and entered in this cause on the 4th day of December 1905, accompanied by an assignment of errors on which they rely, and the same having been duly considered by the Court,

It is Adjudged, Ordered and Decreed that said appeal be allowed to and from said decree to the Supreme Court of the United States.

And it is Further Ordered that the amount of the bond to be given upon said appeal be and the same is hereby fixed at the sum of Five Hundred Dollars. ($500.00) conditioned for the payment by the said defendants of the costs in case they do not make good their appeal as provided by law, and that an authenticated transcript of

the record and proceedings upon which said decree was entered in this court be forthwith transmitted duly certified and verified to the Supreme Court of the United States according to law in such cases made and provided.

TAYLER, *Judge.*

6 (*Appeal Bond.*)

Know all men by these presents: That the City of Cleveland, a municipal corporation under the laws of the State of Ohio, and The Forest City Railway Company, a corporation as principals, and Carl H. Nau and M. A. Fanning, as sureties, are held and firmly bound unto The Cleveland Electric Railway Company in the just and full sum of Five Hundred Dollars ($500.00) to be paid to the said The Cleveland Electric Railway Company, its successors and assigns, for which payment well and truly to be made, each of the principals bind themselves, their successors and assigns, and each of said sureties bind themselves, their heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 19th day of May, A. D. 1906.

The condition of the above obligation is such that, whereas, lately at a term of the Circuit Court of the United States, for the Northern District of Ohio, Eastern Division, in a suit therein pending in which The Cleveland Electric Railway Company was complainant and the City of Cleveland and The Forest City Railway Company were defendants, a decree was rendered on the 4th day of December, 1905, and the said the City of Cleveland, and The Forest City Railway Company having obtained an appeal from said decree to the Supreme Court of the United States.

Now, if the said the City of Cleveland and The Forest City Railway Company shall prosecute their appeal, and shall pay all damages and costs that may be sustained or awarded against them in the event they fail to make such appeal good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] THE CITY OF CLEVELAND,
By TOM L. JOHNSON, *Mayor.*
[SEAL.] THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *President.*
M. A. FANNING. [SEAL.]
CARL H. NAU. [SEAL.]

Approved:
TAYLER, *J.*

7 (Endorsements on Appeal Bond:) 6851. The Cleveland Elec. Ry. Co. *vs.* The City of Cleveland, *et al.* Bond. Filed May 24, 1906. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

8 UNITED STATES OF AMERICA, *ss:*

To The Cleveland Electric Railway Company, or Squire, Sanders and Dempsey, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the United States Circuit Court, for the Northern District of Ohio, Eastern Division, wherein The City of Cleveland and The Forest City Railway Company are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 24th day of May, in the year of our Lord one thousand nine hundred and six.

R. W. TAYLER,
United States District Judge,
Presiding in the Circuit Court.

Service of the above citation is hereby acknowledged and appearance of appellee is hereby entered.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for the Cleveland Electric Ry. Co.

May 24th 1906.

9 (*Certificate of Clerk.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6726. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States for the said District, do hereby certify that the annexed and foregoing pages contain a full and true copy of the petition for appeal, assignment of errors and all proceedings in the matter of the cross appeal mentioned in the caption hereof, the originals of all which remain in my custody as clerk of said Court. There is also attached to, and transmitted with said record, the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name officially and affixed the seal of the said court, at Cleveland, in said district

this 4th day of June, A. D. 1906, and in the 130th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk*,
By B. C. MILLER,
Deputy Clerk.

Endorsed on cover: File Nos. 20,083 and 20,286. N. Ohio C. C. U. S. Term No. 197. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company. Filed February 5, 1906. File No. 20,286. Term No. 321. The City of Cleveland and The Forest City Railway Company, appellants, *vs.* The Cleveland Electric Railway Company. Filed June 14, 1906. File Nos. 20,083 and 20,286.